Local Assistance Procedures Manual

Division of Local Assistance

2020

Caltrans

Local Assistance Procedures Manual

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Chapter 1 **Introduction and Overview**

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Chapter 1 **Introduction and Overview**

1.1 PURPOSE

The Local Assistance Procedures Manual (LAPM) has been prepared to aid California local agencies scope, organize, design, construct and maintain their public transportation facilities when they seek Federal Highway Administration (FHWA) funded federal-aid or state funding. This manual describes the processes, procedures, documents, authorizations, approvals and certifications, which are required in order to receive federal-aid and/or state funds for many types of local transportation projects.

1.2 BACKGROUND

This manual is a compilation and summary of information from many sources including federal and state law, regulations, guidelines and operating practices. It reflects the procedures and practices developed over many years of providing federal-aid funding and state funding for local projects. These practices and procedures have been modified many times by superseding legislation, most recently for changes made by the (Fixing America's Surface Transportation) FAST Act which authorizes the Federal surface transportation programs for highways, highway safety, and transit for the 5-year period 2016-2020.

The general thrust of the changes under the above legislation and reengineering has been to provide the local agency with broad delegation, latitude and responsibility for developing its projects. However, under Title 23, United States Code, Caltrans is responsible for the administration of federal-aid (FHWA funded) transportation projects in California and cannot delegate this overall administrative responsibility.

This manual is meant to be used in conjunction with the Local Assistance Program Guidelines (LAPG).

1.3 RELATED MANUALS

The LAPG describes each of the federal-aid and state-aid local assistance programs and the requirements for obtaining project funding for these individual programs.

The Standard Environmental Reference (SER) provides a 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 local agencies and Caltrans.

For local agency projects on the State Highway System (SHS), all applicable Caltrans manuals and guidelines shall be used. These describe the process 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 project.

1.4 TERMS AND DEFINITIONS

Action - A highway or transit project proposed for FHWA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of federal funds.

Administering Agency - The state or a city, county, other public agency, or nonprofit organizations, that plan, design, advertise, opens bids, award and administer the contract. They are frequently referred to as local agencies.

Affected Environment - The physical features, land, area, or areas to be influenced, or impacted, by an alternative alignment under consideration. This term also includes various social and environmental factors and conditions pertinent to an area.

Affecting - Means will or may have an effect or impact.

Alternative - One of a number of specific transportation improvement proposals, alignments, options, design choices, etc., in a defined study area. For a transportation project, alternatives to be studied normally include the no-action alternative, an upgrading of the existing roadway alternative, new transportation routes and locations, transportation systems management strategies, multi-modal alternatives, if warranted, and any combinations of the above.

Area of Potential Effect (APE) - A term used in Section 106 (Cultural Resource studies) to describe the area in which historic resources may be affected by a federal undertaking.

Avoidance Alternative - A general term used to refer to any alignment proposal, which has been either developed, modified, shifted, or downsized to specifically avoid impacting one or more resources.

California Division Office (CADO) - The Federal Highway Administration (FHWA) state Division Office. The Division Offices are local field offices that provide leadership, guidance, and direction to State Departments of Transportation in the project development and delivery of transportation projects. Working collaboratively with State partners, FHWA Division Offices ensure that the nation's roads, bridges and tunnels are safe and continue to support economic growth and environmental sustainability: https://www.fhwa.dot.gov/about/field.cfm.

California Environmental Quality Act (CEQA) - State environmental law requiring State and local agencies to consider the environmental impacts of their decisions when approving public and private projects. Local agencies are the CEQA lead agency for local agency transportation projects off the SHS, but Caltrans is the CEQA lead agency for local agency transportation projects on the SHS unless otherwise delegated.

Categorical Exclusion (CE) - One of three (3) Classes of Action which prescribes the level of documentation required in the NEPA process. The CEs are Class II Actions, which do not individually or cumulatively have a significant effect on the environment; therefore, neither an EA, nor an EIS is required. Under NEPA Delegation, there are two means of categorically excluding a project: 1) Section 6004 Categorical Exclusions and 2) Section 6005 Categorical Exclusions.

- 6004 Categorical Exclusions: On June 7, 2007, Caltrans and FHWA entered into an MOU pursuant to Section 6004 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 6004 MOU assigns to Caltrans authority and responsibility for CE determinations under the 23 CFR 771.117(c) list and 23 CFR 771.117(d) list, plus those activities specifically listed in Appendix A – Assigned Categories of Activities of the MOU.

- 6005 Categorical Exclusions: On June 22, 2007, Caltrans and FHWA entered into an MOU pursuant to Section 6005 of SAFETEA-LU. Under Section 6005 MOU, Caltrans assumes responsibility for CE determinations for projects that are not on the c or d list or the Appendix A list, but for which a CE classification is appropriate under 23 CFR 771.117 A and B. Under Section 6005 MOU, Caltrans was also assigned and assumed, the USDOT Secretary's responsibilities for environmental review, interagency consultation, and other regulatory compliance-related action pertaining to the review or approval of CEs.

Categorical Exemption/Categorical Exclusion Form - Joint state/local form used to document the applicable MOU under which the CE determination has been made.

Construction (CON)/Construction Engineering (CE) - This phase includes the work of project advertising[1] through construction, preparation of as built plans, final estimates, and payments. It includes all of the post-award activities necessary for the contracting agency to inspect, manage, and oversee the construction of a federal-aid construction project. This phase must be authorized prior to advertising, and CE must be separately identified in this authorization.

Construction Phase - The phase of the transportation project development process that involves the physical act of building by a contractor the proposed project to all plans and specifications developed during final design.

Consultant - A private individual, corporation, or other business organization that may be selected to provide architectural, engineering, environmental, or other related technical services for a local agency project.

Cumulative Impact - Cumulative impact is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Data Universal Numbering System (DUNS) Number - A unique, non-indicative 9-digit identifier required for all federal grant applicants by the U.S. Office of Management and Budget.

Delegated Project - A project under 23 USC 106(c) Assumption by States of Responsibilities of the Secretary (formerly State Authorized) in which Caltrans has authority for all aspects of the project except those activities which cannot by federal law be delegated.

Department of Transportation - The Department of Transportation of the State of California, as created by law; also referred to as the Department, State or Caltrans.

Direct Effects - Effects caused by a given action and occurring at the same time and place. Changes in noise levels; fill discharges in wetlands; and changes in visual conditions are some examples of direct effects.

District - A subdivision of the Department organized to administer the affairs of the Department for a specific geographical area and for the local agencies in that area: https://dot.ca.gov/caltrans-near-me.

DLA - Division of Local Assistance. The office in Caltrans headquarters that is responsible for administering, managing, and implementing the federal-aid highway and state local assistance programs.

[1] CE can include the cost of advertising and award preparation, but only after the phase has been authorized.

DLAE - The District Local Assistance Engineer, the individual in each district responsible for providing services and assistance to the local agencies.

Early Coordination - Communication undertaken near the beginning of the transportation project development process to exchange information and work cooperatively with agencies and the public in an effort to determine the type and scope of studies, the level of analysis, and related study requirements.

Effects - Includes: (a) Direct effects that are caused by the action and occur at the same time and place, (b) Indirect effects that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. The terms effect and impact are synonymous under NEPA. Effects include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect or cumulative.

Environment - The complex of social, natural, and cultural condition, which are present in the physical surroundings.

Environmental Assessment (EA) - One of three (3) Classes of Action which prescribes the level of documentation required in the NEPA process. EAs are Class III Actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I (EISs) or Class II (CEs) are Class III. Class III Actions require the preparation of an EA to determine the appropriate environmental document required.

Environmental Impact Statement (EIS) - One of three (3) NEPA Classes of Action which prescribes the level of documentation required in the NEPA process. EISs are Class I Actions. These are actions that significantly affect the environment and for which an EIS must be prepared. Examples of Class I Actions include a highway project of four or more lanes on a new location, and new construction or extension of a separate roadway not located within an existing highway facility, etc.

FAST Act – Enacted on December 4, 2015, as Public Law 114-94, and is the current Surface Transportation Authorization Act for the 5-year period 2016-2020.

Federal-aid - As used in this manual, it refers to federal funds provided for the development of surface transportation and administered by the FHWA. Generally, these funds are derived from multi-year surface transportation acts, Title I Federal-aid Highways and other Titles. It also includes FHWA administered funds from previous acts frequently titled Highway Acts.

FHWA - Federal Highway Administration, the federal agency responsible for administering the Federal-aid Highway Program.

Field Review - A general term to describe a site visit for the purpose of gathering or verifying data, defining scopes of work, performing analyses, and making decisions for specific projects.

Final Design Phase - The phase of the transportation project development process, which involves the preparation of detailed, working drawings, as well as specifications and estimates for approved transportation projects.

Finding of No Significant Impact (FONSI) - A document by a federal agency that briefly presents the reasons why an action will not have a significant effect on the environment and for which an environmental impact statement, therefore, will not be prepared.

FSTIP - Federal Statewide Transportation Improvement Program, a four-year list of all state and local transportation projects proposed for federal surface transportation funding with the state. This is developed by Caltrans with cooperation of the MPOs and in consultation with the local

non-urbanized government. The FSTIP includes the FTIPs, which are incorporated by reference and other rural federally funded projects. The FSTIP, including incorporated FTIPs is only valid for use after FHWA/FTA approval. See Caltrans PDPM Chapter 4: Programming for more discussion. Also see STIP below.

FTIP - Federal Transportation Improvement Program, a four-year list of all transportation projects proposed for federal surface transportation funding within the planning area of one of the eighteen Metropolitan Planning Organizations (MPOs) in the State. These are only valid for reference when incorporated into the FSTIP and approved by FHWA/FTA (see Caltrans Project Development Procedures Manual (PDPM) Chapter 4: Programming, for more discussion).

FTA - Federal Transit Administration, the federal agency responsible for administering the Federal Transit Program. Rules for the transit program are not covered in this manual (see LAPM Chapter 3: Project Authorization, Section 3.11 FTA Transfers for procedures to transfer federal-aid funds from FHWA to FTA).

Fully Funded - As related to the NEPA document, projects must be fully funded and shown in the applicable FTIP/RTP before Caltrans can approve the related NEPA document. Partial funding of a project may get their Preliminary Engineering (PE) started but the environmental NEPA document is not approvable without the total funding.

Headquarters - The headquarters office of the Department located at 1120 N St., Sacramento, CA 95814.

Impacts - A term to describe the positive or negative effects upon the natural or human environment as a result of a specific project or projects.

Independent Utility - The ability of a transportation improvement to be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.

Indirect Effects - Effects caused by a given action, occurring later in time, or farther removed in distance, but which are reasonably foreseeable. Induced changes to land use patterns, population density or growth rate are examples.

ISTEA - Intermodal Surface Transportation Efficiency Act of 1991 was an Act signed by the President on December 18, 1991, providing authorization for six (6) years for highways, highway safety, and mass transportation. ISTEA was superseded by TEA 21 in 1998 and by SAFETEA-LU in 2005.

Level-of-Service (LOS) - Also known, as Traffic Service. LOS is a qualitative measure describing operational conditions within a traffic stream. LOS is based on service measures such as speed and travel time, freedom to maneuver, traffic interruptions, comfort and convenience. LOS is also affected by conditions such as number of access points, lane width, number of lanes, and percentage of large vehicles. Six levels of service are defined by letter designations from A to F with LOS A representing the best operating conditions, and LOS F the worst.

Local Agency - A California City, county, tribal government or other local public agency. In many instances this term is used loosely to include nonprofit organizations.

LAPG - The Local Assistance Program Guidelines manual provides local project sponsors with a complete description of the federal and state programs available for financing local public transportation related facilities.

LAPM - The Local Assistance Procedures Manual describes the processes, procedures, documents, authorization, approvals and certifications, which are required in order to received federal-aid and/or state funds for many types of local transportation projects.

Local Programs Procedures – Documents used for deployment of new procedures and policies between updates of Local Assistance manual, guidelines and programs. Each procedure is numbered according to calendar year and order in which released.

Logical Termini - Features such as cross route locations that are considered rational end points for a transportation improvement and which serve to make it useable.

Major Project - Defined as a project with a total estimated cost of $500 million or more that is receiving Federal financial assistance. FHWA also has the discretion to designate a project with a total cost of less than $500 million as a Major Project. All Major Projects must be PoDI projects, per Federal Guidance.

Metropolitan Planning Organization (MPO) - Federally mandated regional organizations responsible for comprehensive transportation planning and programming in urbanized areas. Work products include the Transportation Plan, the Transportation Improvement Program, and the Unified Planning Work Program.

Mitigation Measures - Specific design commitments made during the environmental evaluation and study process, which serve to moderate or lessen impacts deriving from the proposed action. In accordance with CEQ, mitigation includes avoidance, minimization, rectification, reduction, and compensation.

National Environmental Policy Act (NEPA) - Federal environmental law requiring federal agencies to consider the environmental impacts of their actions, evaluate least damaging alternatives, and ensure decisions are made in the public's best interest based on a balanced consideration of the need for safe and efficient transportation.

New Location - An area or an alignment proposed for highway development that is not currently used for transportation purposes.

NHS - National Highway System (see LAPM Chapter 2: Roles and Responsibilities, Section 2.2: National Highway System).

No Action - An alternative that is used as the basis to measure the impacts and benefits of the preferred alternative(s) in an Environmental Assessment or EIS. The No Action alternative consists of the existing conditions on the roadway, plus any safety or maintenance improvements, which have been identified in the CDOT 5-Year Transportation Improvement Program.

No-Build Alternative - Normally includes short-term, minor restoration types of activities (e.g., safety and maintenance improvements) that maintain continuing operation of an existing facility. The no-build alternative serves as a baseline for the comparison of other alternatives.

Notice of Intent (NOI) - A notice published in the Federal Register that an EIS will be prepared and considered. The notice shall briefly describe the proposed action and possible alternatives, describe the agency's proposed scoping process including whether, when, and where any scoping meetings will be held, and state the name and address of a person within the agency who can answer questions about the proposed action and the EIS.

Permit - Written permission given by a governmental agency to take certain action during specific steps of the transportation project development process. Permits may include

permission for any construction, excavation, depositing of material, or other work in navigable waters (Corps of Engineers), permission required for the discharge of dredged, or fill material into waters of the United States (Corps of Engineers), and permission to construct bridges, causeways, and drawbridges in navigable waters (U.S. Coast Guard). A permit may also refer certain other clearances or certifications such as a clearance from the Federal Aviation Administration for proposed highway construction in the vicinity of public use and military airports, and water quality certifications for the licensing of an action that would result in a discharge into regulated waters. These approvals, plus certain others relating to solid waste management, underground storage tanks, coastal zone areas, etc., involve approvals and documentation commonly referred to as permits.

Phase - For the purposes of federal-aid authorization, the development of a project is broken into stages or phases: Preliminary Engineering, Right of Way and Construction. Each of these phases must be individually authorized, usually at different times in the development of a project.

Preliminary Engineering (PE) - This phase includes all project initiation and development activities undertaken after its inclusion in the approved FSTIP through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to complete the environmental document.

Project Development - The overall process of advancing a transportation project from concept to implementation. Project development typically encompasses environmental and engineering tasks including planning, location, preliminary design, final design, and construction.

Projects of Division Interest (PoDI) - Projects where the CADO has retained one or more 23 U.S.C.106 (c) responsibilities. These are projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives or advancing key initiatives. Major Projects are always designated as PoDIs.

Project Need - A detailed explanation of the specific transportation problems or deficiencies, which have generated the search for improvements. It should refer to technical information, as necessary, such as measures of traffic efficiency, or demand (origin-destination patterns, modal links, queue lengths, motorist delays, level of service, etc.), and other goals (economic development, safety improvement, legislative directives, etc.). Much of this information should be generated by the transportation planning process at a very early stage. The explanation of need should be a problem statement discussion, not a solution oriented discussion.

Project Oversight Agreement (POA) - The project specific document which highlights who is responsible for key project oversight activities. Each PoDI project will have a POA.

Project Purpose - A broad statement of the overall intended objective to be achieved by a proposed transportation facility. Normally, the purpose can be defined in just a few sentences. For instance, it may address expanded capacity in a given transportation corridor to facilitate the safe and efficient movement of people and goods, or improved access to a given area or community.

Public Hearing - A meeting designed to afford the public the fullest opportunity to express opinions on a transportation project. A verbatim record (transcript) of the proceedings is made part of the project record.

Public Involvement - These activities, which present information to the public, seek public comments and which serve to ensure consideration of public opinion.

Public Meeting - An announced meeting conducted by transportation officials designed to facilitate participation in the decision-making process, and to assist the public in gaining an informed view of a proposed project at any level of the transportation project development process. Also, such a gathering may be referred to as a public information meeting.

Record of Decision (ROD) - The ROD documents the Secretary of Transportation's decision to approve the Preferred Alternative as described in the Environmental Impact Statement (EIS).

Record Retention - Project records shall be kept for at least 3 years after FHWA's final payment of the final voucher, per 2 CFR 200.333.

Right of Way (R/W) - This phase includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.

S&H Code - California Streets and Highways Code, this code contains many of the laws governing funding and development of local streets and roads projects.

SAFETEA-LU - Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users signed into law by President George W. Bush, on August 10, 2005, with guaranteed funding for highways, highway safety, and public transportation totaling $244.1 billion. SAFETEA-LU was built on the foundation established by two preceding federal transportation Acts: ISTEA and TEA-21.

Scope - Scope consists of the range of actions, alternatives, and impacts to be considered in a NEPA document.

Scope of Work - A detailed description of tasks is prepared in advance of engineering and environmental work to explicitly define the contents of studies.

Section 4(f) - Section 4(f) of the U.S. Department of Transportation Act of 1966 permits the use of land for a federally-funded transportation project from a significant publicly owned park, recreation area, wildlife or waterfowl refuge, or historic site when it has been determined that: (1) there are no feasible and prudent alternatives to such use, and (2) the project includes all possible planning to minimize harm to the property.

Significant Impacts - Any number of social, environmental, or economic effects, or influences which may be brought about as a result of the implementation of a transportation improvement. Significant impacts may include effects, which are direct, secondary, or cumulative. The term significant is used and interpreted by the FHWA in determining which type of NEPA document is appropriate. Categorical exclusions are those actions, which do not involve significant effects. Environmental Impact Statement (EIS) projects in most cases can and do involve significant impacts.

Significantly - As used in NEPA requires consideration of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Intensity refers to the severity of the impact.

State Funds - As used in this manual, includes the state funds provided to local agencies for specific transportation projects and programs administered by the DLA. State funds are currently provided for the following projects: Bicycle Transportation Account, Proposition 116 - Bicycle Program, Environmental Enhancement and Mitigation (EEM), Federal Apportionment Exchange, State Match programs, Proposition 1B Bond Program, and State Transportation Improvement Program. The LAPG further defines these programs.

Stewardship Agreement - A signed agreement between the FHWA and Caltrans defining the extent to which Caltrans and FHWA have project approval and oversight responsibilities.

STIP - State Transportation Improvement Program, a five-year list of projects proposed in RTIPs and the Proposed STIP that are approved and adopted by the California Transportation Commission (CTC). See Caltrans PDPM Chapter 4: Programming for more information.

Study Area - An identified amount of land or topography, selected, and defined at the outset of engineering, or environmental evaluations, which are sufficiently adequate in size to fully identify, analyze, document impacts and effects for proposed projects within its boundaries.

TEA 21 - Transportation Equity Act for the 21st Century was enacted on June 9, 1998, which authorized the federal surface programs for highways, highway safety, and transit for the six (6) year period 1998-2003. It was superseded by SAFETEA-LU in 2005.

Transportation Project Development Process - An interactive, multi-phase series of activities typically spanning a period of years which involve comprehensive planning, prioritization, detailed engineering and environmental studies, and agency and public involvement which lead to the selection, design, and construction of identified transportation improvements.

- 23 USC - The section (Title 23) of the United States Code containing laws relating to highways.
- 23 CFR - The section (Title 23) of the Code of Federal Regulations containing regulations (general and permanent rules published in the Federal Register) relating to highways. Not included are regulations based on Civil Rights requirements in Title 49, the Uniform Relocation Assistance and Real Property Policies, and other federal laws and regulations as described in this manual.

1.5 Acronyms and Description

The acronyms table is a compilation of the acronyms that you will find throughout the manual.

Table 1: Acronyms

Acronyms	Description
3R	Resurfacing, Restoration or Rehabilitation
AADT	Annual Average Daily Traffic
AASHTO	American Association of State Highway and Transportation Officials
AC	Advance Construction
ADA	Americans with Disabilities Act
ASTM	American Society for Testing and Materials
ATP	Active Transportation Program
CADO	California Division Office
Caltrans	California Department of Transportation
CCO or CO	Contract Change Order or Change Order (terms used interchangeably)
CE	Construction Engineering
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CON	Construction
CRS	California Road System
CTC	California Transportation Commission
CTIPS	California Transportation Improvement Program System

DBE	Disadvantaged Business Enterprise
DES	Division of Engineering Services
DIB	Design Information Bulletins
DLA	Caltrans Division of Local Assistance
DLAE	Caltrans District Local Assistance Engineer
DMT	Caltrans Division of Mass Transportation
DRISI	Division of Research, Innovation, and System Information (Caltrans)
DTR	Caltrans District Transit Representative
E-76	Electronic Authorization to Proceed
EEM	Environmental Enhancement and Mitigation Program
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
ER	Emergency Relief
FA	Federal-Aid
FADS	Federal-Aid Data System (State Database)
FAST Act	Fixing America's Surface Transportation
FC	Functional Classification
FFY	Federal Fiscal Year
FHWA	Federal Highway Administration
FIPS	Federal Information Processing Standards
FMIS	Fiscal Management Information System (Federal Database)
FPN	Federal Project Number
FSTIP	Federal Statewide Transportation Improvement Program
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
FY	Fiscal Year (State)
HBP	Highway Bridge Program
HCM	Highway Capacity Manual
HOV	High Occupancy Vehicle
HPMS	Highway Performance Monitoring System
HSE	Highway System Engineering
HSIP	Highway Safety Improvement Program
IAST	Independent Assurance and Sampling Testing
IIP	Interregional Improvement Program (Portion of STIP)
IRI	International Roughness Index
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITS	Intelligent Transportation Systems
LAPG	Local Assistance Program Guidelines
LAPM	Local Assistance Procedures Manual
LPA	Local Programs Accounting Branch
LPP	Local Programs Procedures
LRFD	Load and Resistance Factor Design
LRH	Last Resort Housing
LRS	Linear Reference System
LSSRP	Local Seismic Safety Retrofit Program
MAP-21	Moving Ahead for Progress in the 21st Century
MPO	Metropolitan Planning Organization
MTC	Metropolitan Transportation Commission
NACTO	National Association of City Transportation Official
NBI	National Bridge Inventory

NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NEPA	National Environmental Policy Act
NHS	National Highway System
OA	Obligation Authority
OC	Overcrossing
OFR	Caltrans Office of Federal Resources
OWP	Overall Work Plan
PA/ED	Project Approval/Environmental Document
PCC	Portland Cement Concrete
PoDI	Projects of Division Interest
PE	Preliminary Engineering
PM	Post Mile
POA	Project Oversight Agreement
PPNO	Project Planning Number
PS&E	Plans, Specification and Estimate
PSA	Program Supplement Agreement
QAP	Quality Assurance Program
R/W	Right of Way
RAP	Relocation Assistance Program
RIP	Regional Improvement Program (Portion of STIP)
ROD	Record of Decision
RSTP	Regional Surface Transportation Program
RTPA	Regional Transportation Planning Agency
S&H	Streets and Highways Code
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act- A Legacy for Users
SD	Structurally Deficient
SEMP	Systems Engineering Management Plan
SERF	Systems Engineering Review Form
SHA	State Highway Account
SHS	State Highway System
SLA	Structures Local Assistance
SR	Sufficiency Rating
SR2S	Safe Routes to School Program
SSARP	Systemic Safety Analysis Report Program
STBGP	Surface Transportation Block Grant Program
STD	State Transportation Department
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
STRAHNET	Strategic Highway Corridor Network
SWITRS	Statewide Integrated Tracking Records System
TAP	Transportation Alternatives Program
TASAS	Traffic Accident Surveillance Analysis System
TCP	Traffic Control Plan
TE	Transportation Enhancements Program
TEA-21	Transportation Equity Act for the 21st Century
TIMS	Transportation Injury Mapping System
TRB	Transportation Research Board
UC	Undercrossing

USC	United States Code
VMT	Vehicle Miles Traveled

1.6 MANUAL ORGANIZATION

The manual is divided into twenty chapters. Each chapter describes a process and 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. The LAPG further defines these programs.

Figure 1-1 outlines the federal-aid project process and references the associated chapters. This chart is not intended to represent the actual chronological sequence of federal-aid implementation.

State-Funded Projects

Projects seeking only state funds require less oversight and review than those seeking 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, 17 and 19 apply in whole, or in part, to these projects. The LAPG further defines these programs.

Figure 1-2: Typical Procedures for State-Only Projects highlights the actions needed for state-funded projects.

Chapter Summaries

The chapters are generally in chronological sequence when developing a project, however, some of the procedures can be done concurrently, or must be repeated for the next phase of a project. The flow charts in the exhibits for this chapter define the general relationship between the processes. The flow charts at the beginning of most chapters further define the relationships between these processes and procedures.

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. It also discusses the federal policy concerning funding projects at less than the full allowable federal share (underfunding) transferring funds to FTA.

Chapter 4: Agreements describes the agreements needed between the local agency 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 local agency decision-makers commit the project to final design and implementation.

Chapter 9: Civil Rights and Disadvantaged Business Enterprises (DBE) 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: Oversight and Process Reviews describes the oversight and process review methods by which Caltrans and/or FHWA use to ensure that the agencies have complied with their commitments and certifications under federal and state laws, regulations, and these procedures.

Chapter 20: Deficiencies and Sanctions describes the course of action to be expected when local agencies fail to comply with state and federal requirements during their project. An appeal process is available when the local agency disagrees with district decisions or sanctions.

1.7 MANUAL UPDATES

This manual is available to local agencies on the Internet and can be found here.

As updates are made, they will be available on the Internet and the agency will be responsible for obtaining its own printed copy if needed.

Comments and suggestions for improvement to the manual or the processes and procedures described herein are welcome. They may be submitted to: DLAPublications@dot.ca.gov.

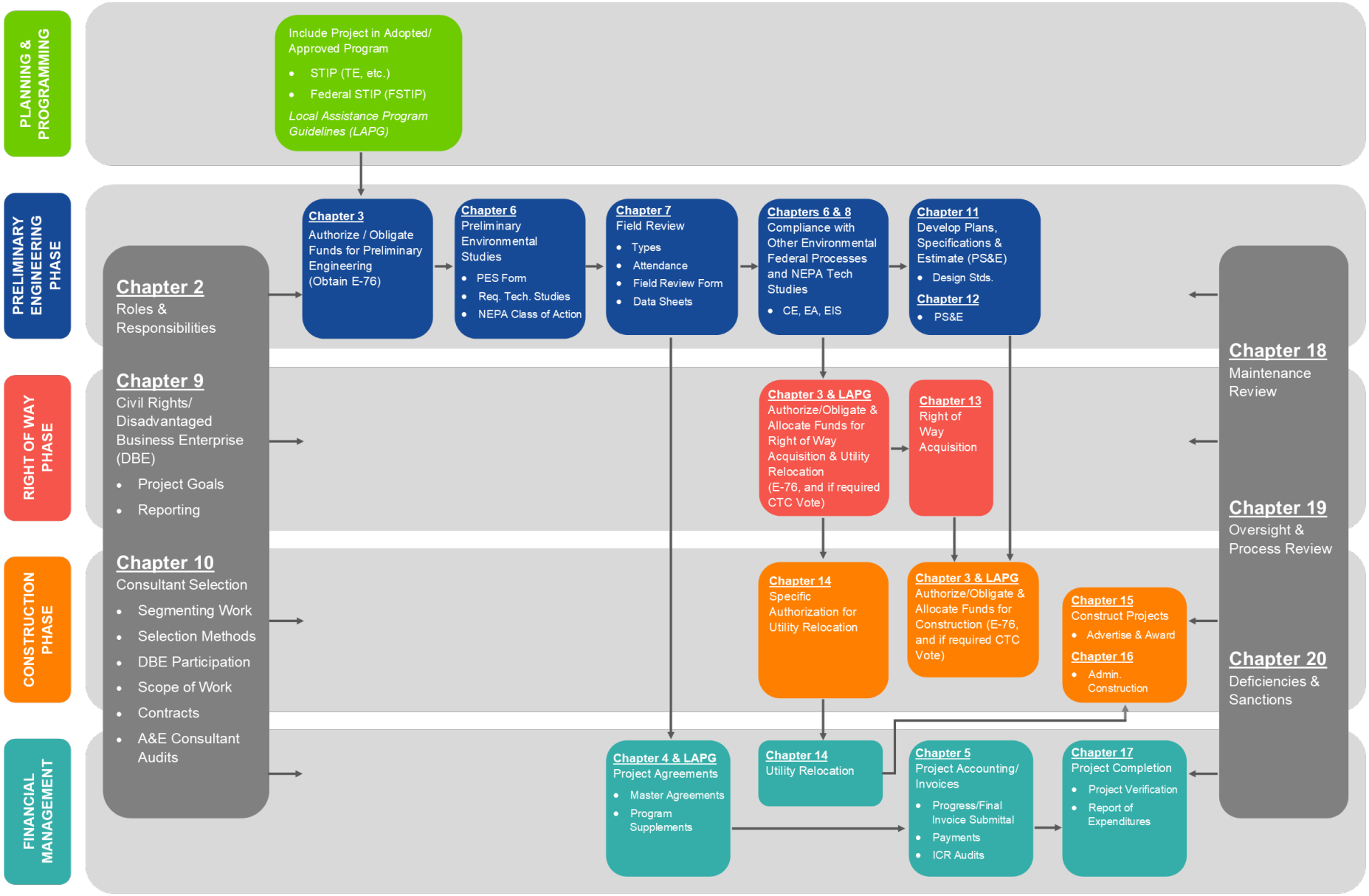

Figure 1-1: Typical Procedures for Federal-Aid Projects

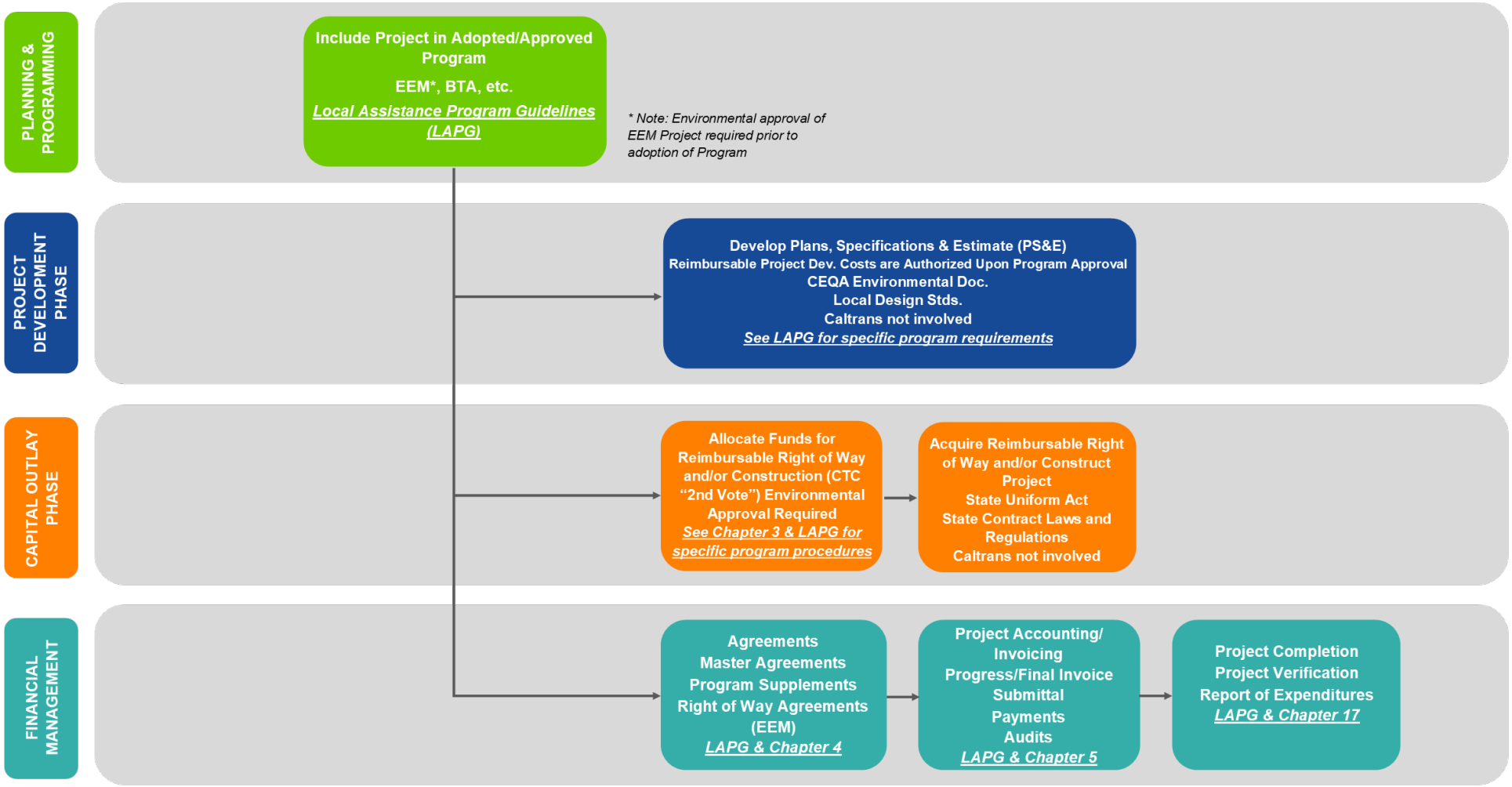

Figure 1-2: Typical Procedures for State-Only Projects

Chapter 2 **Roles and Responsibilities**

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Exhibits

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

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

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 agency's primary contact for processing projects, providing assistance for local agency development efforts, and answering local agency questions. Please visit https://dot.ca.gov/programs/local-assistance/other-important-issues/local-assistance-contacts for a current listing of District Local Assistance contacts.

The responsibility for implementing individual projects on the local streets, roads, and other transportation systems resides with the local agencies, 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. However, because procedures vary with each state funding 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 this manual. It has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting these programs. When a project involves federal funding, the FHWA is involved according to these responsibilities and the delegations in the Stewardship Agreement described below. When another federal agency has permit jurisdiction or other role in the development of a project, the 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 as allowed under the provisions of the Fixing America's Surface Transportation (FAST) Act and previous transportation acts. Since the reengineering of local assistance procedures in 1995, Caltrans has passed on these delegations to local agency 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 locals are administering the federal-aid program 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 local agencies 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 chapters in this manual provide the details for carrying out these responsibilities.

2.2 National Highway System

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) established provisions for Congress to adopt a National Highway System (NHS) to provide 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; meet national defense requirements; and serve interstate and interregional travel.

Until Congress made its official adoption, the NHS was defined as all principal arterials, including the Interstate System. On November 28, 1995, the President signed the legislation defining the NHS to include all Interstate System routes, a selection of urban and rural principal arterials, the defense Strategic Highway Network including Strategic Highway Network connectors, and intermodal connectors. As a result of MAP-21, there are about 230,000 NHS centerline miles nationwide, including 14,160 NHS centerline miles in California. About 5,453 of the 14,160 NHS miles in California are off the SHS.

See LAPG Chapter 3: Federal-Aid Routes & Functional Classifications for further discussion and a listing of the local agency NHS routes under CA Non-State Highway NHS Excel worksheet.

2.3 Stewardship and Oversight Agreement

The purpose of the FHWA/Caltrans Stewardship and Oversight Agreement (S&O) is to define roles and responsibilities, outline authorities, and assure accountability in effectively and efficiently managing program and project delivery of the Federal-Aid Highway Program (FAHP).

Authority for the Agreement comes from 23 USC 106(c) which requires the United States Department of Transportation (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 Agreement 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. Through this Agreement, FHWA has delegated responsibility for oversight and approval of low-risk project level activities to Caltrans. The approach to high-risk project oversight is conducted in two steps as explained in Section 2.5: Project of Division Interest projects: 1) select the projects that traditionally pose a risk to the health of the FAHP (Projects of Division Interest projects), and 2) within each Project of Division Interest project, further delegate approval authorities for activities that pose a low risk to that individual project.

2.4 DELEGATED PROJECTS

Projects not selected as Projects of Division Interest are lower-risk and referred to as Delegated Projects. For 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 non-Interstate 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 local agency has approval authority for most project level activities. The 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 (Projects of Division Interest), and therefore could alter Caltrans or the FHWA's involvement in their approval.

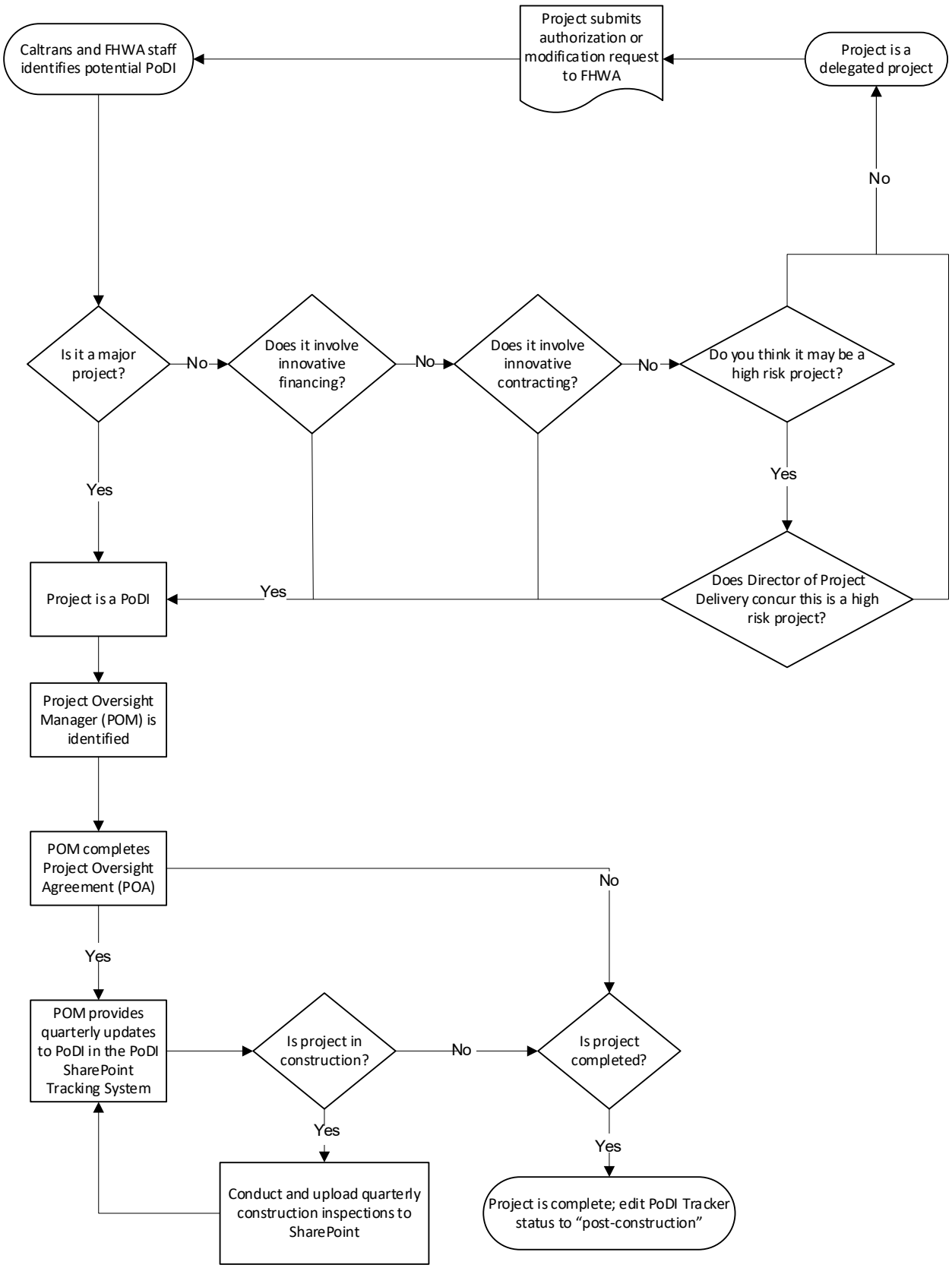

Figure 2-1: PoDI Project Identification and Review Process

2.5 PROJECTS OF DIVISION INTEREST

Projects of Division Interest (PoDI) are projects where Caltrans can assume Section 106 (c) responsibilities but FHWA has retained responsibility for (1) one or more of the Section 106 (c) items, or (2) FHWA has not retained responsibility for any such items but the projects are otherwise designated as a PoDI by the Division. Prior to September 2007 these projects were referred to as FHWA Full-Oversight projects based on set criteria (rather than risk) such as Interstate construction over $1 million, major Intelligent Transportation System, etc. While Caltrans is responsible for approving most project level activities on low risk (delegated) projects, the FHWA maintains many project level approval activities for Projects of Division Interest projects.

Project level approval authority for Project of Division Interest projects are project specific. Very few Local Assistance projects are designated as Projects of Division Interest. Each Project of Division Interest project requires a unique Project Oversight Agreement, as mentioned in 2015 FHWA/Caltrans Stewardship and Oversight Agreement.

Projects of Division Interest Project Selection Process

Project of Division Interest determinations are a joint, cooperative effort made on a project-by-project and phase-by-phase basis. Projects not meeting the criteria below are considered delegated.

The PoDI criteria are established by the Project Delivery Director in consultation with the Project Delivery Team and Division Directors. These criteria are risk-based and, therefore, will be adjusted as priorities, threats, and opportunities change at the State and National level. Federal-aid projects meeting one or more of the following criteria will be designated as a PoDI:

1. **Major Projects** (23 U.S.C. 106(h))
   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. All FHWA Divisions Offices must designate Major Projects as PoDIs. Further, projects with a total estimated cost $400 million or more with the potential of increasing to $500 million or more during the life of the project are closely monitored by an assigned Project Delivery Transportation Engineer (TE). Project sponsors often agree that meeting Major Project requirements “just in case” is a good idea. However, if the total estimated project cost remains below $500 million, the project remains a delegated project unless it meets one or more of the criteria below.

2. **Innovative Financing**
   Projects utilizing TIFIA loans, TIGER, or ATCMTD discretionary grants, or Public/Private Partnership (P3) funding. Other varieties of innovative financing will be considered by the Project Delivery Director on a case by case basis.

3. **Innovative Contracting**
   Projects utilizing Construction Manager/General Contractor (CM/GC), Design/Build, or SEP-14 experimental contracting methods (e.g., Job Order Contracting). Other varieties of innovative contracting will be considered by the Project Delivery Director on a case by case basis.

4. **Risk Based** (23 U.S.C 106(g))
   Any project that the Division identifies as having an elevated level of risk may be selected for risk-based stewardship and oversight resulting in the PoDI designation.

Consideration may be given to complex Intelligent Transportation System (ITS) projects, politically-sensitive projects, projects with innovative features, or other relevant reasons. Additionally, the project sponsor may be as much a consideration as the project. For example, though a project does not meet the above criteria, applying this criterion could provide opportunity for greater FHWA engagement with a Caltrans District or LPA who do not have any PoDIs.

Caltrans and the FHWA jointly determine which projects are considered to be Project of Division Interest based on the criteria listed above. The Project of Division Interest project determination is made at the District level in conjunction with FHWA. One goal under the Agreement is to identify Project of Division Interest projects and FHWA approval/ involvement level as early as possible (prior to Authorization to Proceed). Continuous, open communication takes place throughout the year regarding the selection of Project of Division Interest projects. Regular meetings between Caltrans and the FHWA are scheduled to discuss any changes to the known or anticipated Project of Division Interest projects. Those projects selected as Project of Division Interest are mutually agreed upon by the appropriate Caltrans District and FHWA. The steps for identifying Project of Division Interest Local Assistance projects are as follows (see Figure 2-1):

1. **Pre-Authorization:** Caltrans Local Assistance procedures, checklists, and forms require local agency to assess proposed projects against the Project of Division Interest criteria and identify whether they think the project qualifies as a Project of Division Interest project prior to each Authorization to Proceed.
2. **Initial Authorization to Proceed:** The local agency indicates whether the project meets any Project of Division Interest project criteria in their initial LAPM 3-A: Project Authorization/Adjustment Request. The Caltrans District will determine if the project meets any of the criteria for Project of Division Interest projects listed above. The District may request assistance from Caltrans Headquarters' Division of Local Assistance (DLA) and local agency may be asked to participate in the POA development.

   If the assessment reveals that the project does meet one or more of the above criteria, then the Caltrans DLAE will contact the FHWA representative to discuss the assessment of the project. At this point, the Caltrans and FHWA representatives will jointly decide if the project meets the above criteria. If the joint decision is that one or more of the criteria are met, then the representatives will jointly decide if the criteria met are enough to warrant selection as a Project of Division Interest project. If the project does not meet the criteria, as determined by the District Local Assistance Engineer (DLAE), then the project will move forward as a Delegated project.

   Once a project has been selected as a Project of Division Interest project, a Project of Division Interest Project Oversight Agreement (refer to Attachment A of the Stewardship and Oversight Agreement) will be filled out to identify FHWA and Caltrans project approval authorities for that particular project. The Project of Division Interest Project Oversight Agreement will document those areas where FHWA will have approval authority. It will also provide a project description, federal-aid and state project numbers, and a discussion of FHWA's involvement on the project outside of the approval authority.

   The DLAE will work directly with the Local Agency and FHWA to assure that the project responsibilities of the Project of Division Interest Project Oversight Agreement are fulfilled.

Caltrans headquarters' DLA may assist the District as requested. (For Major Projects, this information will be captured in an Oversight Agreement.) If a project is determined to be Project of Division Interest at the initial Authorization to Proceed, then the Project of Division Interest Project Oversight Agreement will be revisited once the project moves closer to construction. The information within the Project of Division Interest Project Oversight Agreement will be jointly agreed upon by the Caltrans District Director (or designee) and FHWA representatives and will include signatures acknowledging this Agreement. Appropriate local agency representative signature is optional.

3. **Subsequent Authorization to Proceed:** As in the initial Request for Authorization to Proceed, the project will be reassessed against the Project of Division Interest project criteria by Caltrans DLAE and FHWA at each of the subsequent Request for Authorization to Proceed milestones. At these milestones, it will be jointly decided if the project meets the Project of Division Interest criteria and should be de-selected, selected, or continued as a Project of Division Interest project. If the reassessment at these milestones reveals that the project meets one of the Project of Division Interest criteria and should be selected as a Project of Division Interest project, then the same process described under step 2 above will be followed. Otherwise, the project will proceed as a Delegated Project.

   Once a project or phase is determined to be Projects of Division Interest, the process is carried one step further by highlighting activities on the Project Responsibilities List that can be further delegated. The FHWA maintains approval authority for those activities that cannot, by law, be delegated, and activities that may pose a risk to individual projects. Highlighted boxes in the Project of Division Interest projects column of the Project Responsibilities List (refer to Attachment A of the Stewardship and Oversight Agreement) are designated as either the FHWA or Caltrans and signed and dated by both agencies. The documented and signed Project Responsibilities List may also include a general summary of other involvement, including attending regular meetings, conducting project inspections, etc.

2.6 Right-of-Way Certification Delegation

In addition to the delegations discussed above, guidance regarding Caltrans delegation for RW 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)

The reengineering of local assistance procedures in 1995 gave local agencies additional responsibility and accountability for non-NHS projects. Many of the responsibilities delegated to Caltrans under the Stewardship Agreement are further delegated to the local project sponsors. Caltrans preliminary engineering, construction review and approval activities are reduced, and other activities involving environmental reviews, project authorization, Disadvantaged Business Enterprises, 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 local agencies described above for non-NHS projects also applies for NHS projects. With the following exceptions (discussed in detail in the appropriate chapters of this manual), procedures are the same for both types of projects.

Field Reviews

Field reviews are required for significant local agency 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 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 local agency 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

Local agencies 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 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 except on Project of Division Interest projects, which requires FHWA approval.

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. FHWA approval of the Public Interest Findings may also be required on Project of Division Interest projects.

Restricted Construction Contract Provisions

Warranty clauses are restricted on NHS projects and the use of proprietary items is restricted on all federal-aid projects unless an exception is approved.

Construction Administration for Significant NHS Projects

When Caltrans requires a field review for significant NHS projects, the local agency'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

Local agencies may use the Quality Assurance Program described in this manual for projects on or off the NHS. Caltrans will perform Independent Assurance (IA) if Caltrans test methods are used.

Final Inspection

The local agency will make a final inspection of completed Delegated Projects prior to FHWA authorizing reimbursement of the final project voucher.

2.9 FEDERAL-AID PROJECTS OF $100 MILLION TO $500 MILLION OR MORE

Projects of $500 Million or More

Local agencies 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 local agencies for such projects as may be identified by FHWA, submit to Caltrans for each project:

- A Project Management Plan
- Initial Financial Plan and its Financial Plan Annual Updates

A cost estimate review 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) shall be submitted prior to the Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE) determination. A final Project Management Plan shall be submitted within 90 days after the ROD, FONSI, or CE determination which determine the scope of the projects. The plan shall:

- 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 to $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 local agency waits until requesting authorization to submit the Financial Plan for projects $500 million or more, the authorization will be delayed since FHWA headquarters has to concur in the

approval of the Financial Plan. For design/build projects, the plan must be received prior to award of the design/build contract.

- Be updated and submitted annually once the initial Financial Plan is approved until construction is substantially complete.
- 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 located at: http://www.fhwa.dot.gov/ipd/project_delivery/defined/fhwa_delivery_process.htm

Projects between $100 Million and $500 Million

Local agencies receiving any amount of federal-aid for a project with an estimated total cost of $100 million or more shall prepare an Initial Financial Plan and its Annual Updates and make the plan available to Caltrans/ FHWA upon request. Financial Plans for projects with an estimated cost 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.

The process for submitting, reviewing, and approving these plans is shown in Figure 2-2. These projects may not require a Project Oversight Agreement (Stewardship Agreement) signed by FHWA, Caltrans and, if applicable, the local agency.

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 Web site at: http://www.fhwa.dot.gov/ipd/project_delivery/defined/fhwa_delivery_process.htm.

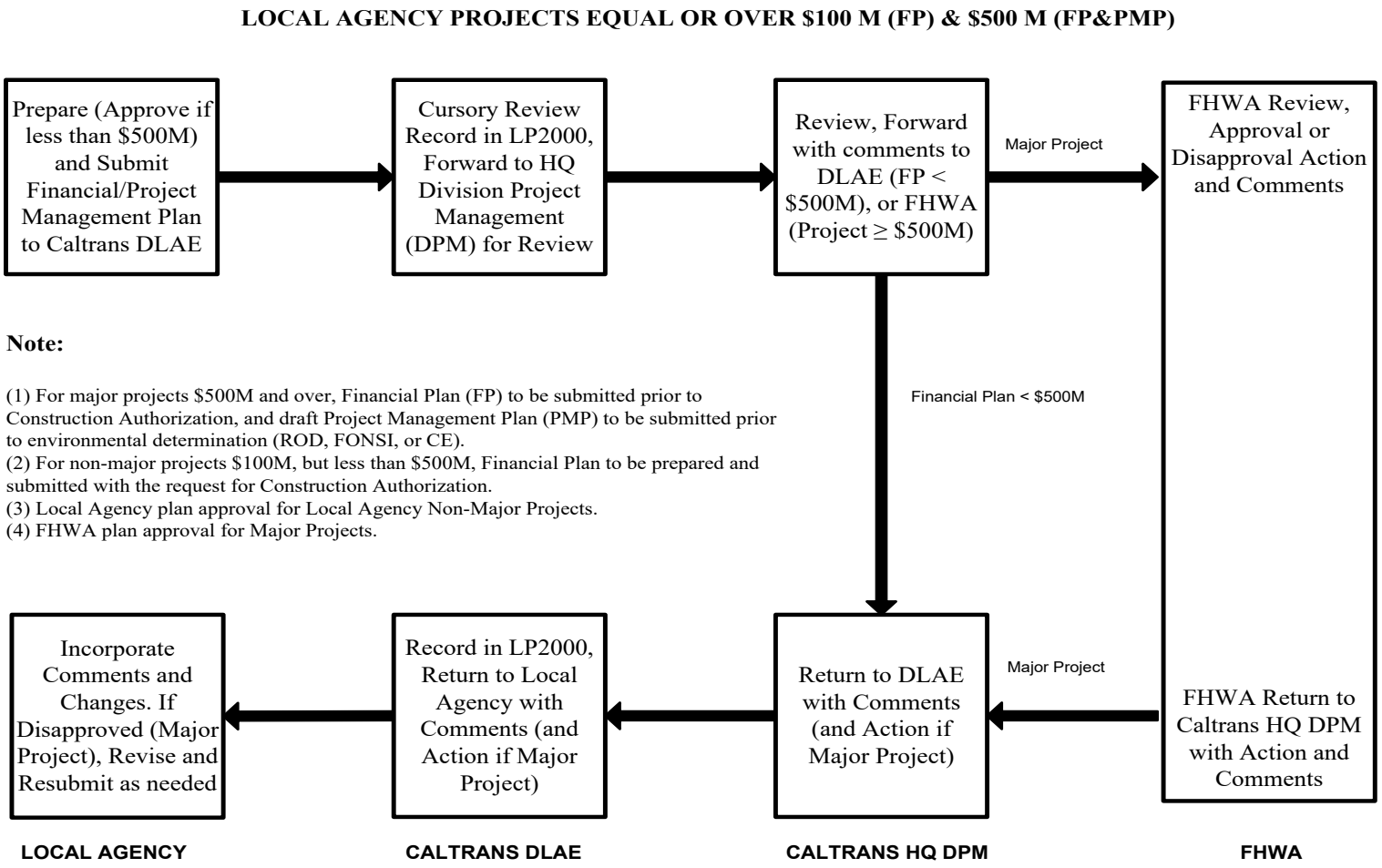

Figure 2-2: Major Federal-Aid Project Flowchart

2.10 FHWA RESPONSIBILITIES

As discussed above, the FHWA has the overall responsibility for the Federal-Aid Highway Program (FAHP) pursuant to 23 USC § 106 with the exception of the environmental responsibilities under 23 USC § 326 and 327. In addition, the FHWA is ultimately responsible for ensuring the financial integrity and compliance with applicable federal laws and regulations.

Through the stewardship agreement, 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.

Project Implementation

At the project-level, strategic stewardship and oversight are accomplished through: 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
- Right-of-Way Certificate 3
- Protective buying and hardship acquisition
- New/modified interstate access determination of engineering and operations acceptability (minor access changes assigned to Caltrans)
- Design exceptions on the interstate
- Buy America waivers
- Innovative contracting practices

Strategic project oversight is accomplished through the Project of Division Interest project process described in Section 2.5: Project of Division Interest projects. For projects that are determined to be of high-risk to the FAHP, FHWA and Caltrans will jointly determine which project-level approvals will be retained by the FHWA division office or delegated to Caltrans. In general, all major projects (those projects with total cost greater than $500 Million) will be Project of Division Interest projects.

2.11 CALTRANS RESPONSIBILITIES

Caltrans is responsible and accountable to the 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 California Transportation Commission and State Legislature.

These responsibilities are divided into three areas: Policy and Procedures, Program Management, and Project Implementation.

It is imperative that Caltrans employees involved in project ranking or scoring, or process reviews, have a completed Conflict of Interest Statement (form ADM-3043) on file.

Policy and Procedures

Caltrans establishes uniform policies and procedures to assist the local agencies 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 local agencies, MPOs, RTPAs, other affected agencies, and organizations.

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 Local Assistance Program Guidelines describes each current program.

Conflict of Interest

49 CFR, Part 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-R3 titled 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.

Conflict of Interest Form ADM-3043 is to be completed annually by all Caltrans headquarters and district employees that review, rank and rate project applications from local agencies for any federal or state funded programs. Forms must be signed by the employee and their respective supervisor. Signatures from the Acquisition Analyst and Contract Officer are not required for DLA staff who are not acting as a contract manager. Immediate supervisors shall keep copies of the signed ADM-3043. Additional information on conflict of interest is provided by the Division of Procurement on the intranet at: https://dpac.onramp.dot.ca.gov/#1. Instructions are also included on the back of the ADM-3043.

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.

Project Implementation

Some major federal-aid project implementation steps delegated by the FHWA to Caltrans cannot be further delegated to the local agency 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
- Develop financial plan for federal projects between $100 million and $500 million
- 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) [23 CFR 620.104]
- Provide approval of preliminary plans for unusual /complex bridges or other structures (non-interstate) [23 USC 109109(a) & FHWA policy]
- Retaining right-of-way encroachments [23 CFR 1.23(b) & (c)]
- Use of local force account agreements [23 CFR 635.104 & 204]
- Use of publicly owned equipment [23 CFR 635.106]

Note: For complete listing refer to Attachment A of the Stewardship and Oversight Agreement.

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

Caltrans also provides assistance to the local agencies 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 local agency through the required process and procedural steps.

Where expertise is not otherwise available, the local agency 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 Disadvantage Business Enterprise 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.

Oversight

As outlined in LAPM Chapter 19: Oversight and Process Reviews, Caltrans and FHWA will use the process review and other oversight methods to determine if local agencies are in compliance with all federal-aid laws, regulations, and procedures. The oversight findings will be used to evaluate all aspects (including Title 23 requirements) of the local agencies federal-aid program and to improve local assistance procedures.

Maintenance Reviews

Annually, Caltrans reviews project maintenance for selected agencies 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. For the purpose of this manual, these agencies/entities are commonly called local agencies.

Project Implementation

The local agency 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 a local agency 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 local agencies to the greatest extent possible for those federal-aid projects that are located off of the State Highway System. The local agency 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
- Decision to hold field review for projects off the NHS
- Determining Project DBE contract goals

- For ITS projects and other projects with ITS elements, make a preliminary classification of High-Risk, Low-Risk, or Exempt
- 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 local agencies' PS&E procedures for most NHS projects and FHWA for Projects of Division Interest)
- Qualifying/selecting right of way consultants
- Right of Way acquisitions and relocation
- Preparing and approving Quality Assurance Programs
- Advertising and awarding construction project
- Construction contract administration and inspection (Caltrans must approve the local agencies 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.

Responsible Charge

Consistent with 23 CFR 172.9, a local agency 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 200.333.

The responsible charge must be employed directly by the local agency 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 local agency's employee in responsible charge need not to be an engineer.

Data Universal Numbering System (DUNS) Number

In compliance with the Transparency Act reporting requirements and 2 CFR Part 25.100, local agencies must acquire a DUNS Number. DUNS Number assignment is required for all federal-aid recipients and can be requested at no charge at: http://fedgov.dnb.com/webform.

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 local agency's responsibility to submit a request for allocation on time per the CTC preparation schedule. Refer to https://dot.ca.gov/programs/transportation-programming/office-of-ctc-liaison-octcl.

Programming

The CTC currently selects federal Transportation Enhancements 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 local agency with their application rules, procedures and timelines. They are also responsible for providing the local agency with results of the decisions about its projects and the agency, CTC, and federal approval dates.

The local agency 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 State Resources Agency selects the projects to be funded by the CTC for the Environmental Enhancement and Mitigation (EEM) program.

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, notably EEM. These agencies must follow the same rules and regulations, which apply to any other local agency 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 a local agency that can provide these services and is familiar with the applicable rules.

2.16 References

23 USC 106(c)
https://www.govinfo.gov/content/pkg/USCODE-2011-title23/pdf/USCODE-2011-title23-chap1-sec106.pdf

FAST Act
https://www.fhwa.dot.gov/fastact/

FHWA Major Projects website
http://www.fhwa.dot.gov/ipd/project_delivery/defined/fhwa_delivery_process.htm

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

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Exhibits

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

LAPM 3-A: Project Authorization/Adjustment Request
Exhibit 3-G: Federal Project Log Sheet
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 Federal Transit Administration
Exhibit 3-L: Local Assistance Project Prefixes
Exhibit 3-P: Sample “Delegated Project Authorization”
Exhibit 3-R: Non-Infrastructure Project Work Plan Sample

Chapter 3 **Project Authorization**

3.1 INTRODUCTION

General

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 is not eligible for federal reimbursement. Construction phase work performed prior to authorization may disqualify that phase.

On May 28, 2015, the FHWA and California Department of Transportation (Caltrans) entered into the current Joint Stewardship and Oversight Agreement (Agreement). This Agreement outlines the roles and responsibilities for oversight and approval of federally funded transportation projects under the jurisdiction of the FHWA. The Agreement defines two categories of projects - Delegated and Projects of Division Interest. For Delegated projects, the FHWA has delegated as many project oversight and approval actions to Caltrans as the law allows. On Projects of Division Interest projects, approval actions are determined on a project-by-project risk basis as agreed to by the FHWA and Caltrans. Regardless of whether the project is Delegated or Projects of Division Interest, Caltrans recommends federal authorization and the FHWA must formally authorize the work. The determination as to whether a project is Delegated or Projects of Division Interest is based on the criteria listed in Section 2.5: Projects of Division Interest Projects, and the process is defined in Figure 2-1, in LAPM Chapter 2: Roles and Responsibilities.

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.

Terms and Definitions

Advance Construction (AC) – Advance Construction is a project authorization technique that allows the Federal Highway Administration to authorize a project without obligating Federal funds. FHWA is required to fully obligate the federal share of a federal-aid project at the time it executes a project agreement. Under an AC authorization, FHWA approves a project as being eligible for Federal funding but does not commit to funding the project. As such, the project must meet all Federal requirements except for the requirement to obligate funds. Projects authorized under Advance Construction procedures will not receive federal reimbursement until Federal funds become available and are obligated on a subsequent sequence.

Allocation - An administrative distribution of funds.

Apportionment - A statutorily prescribed division or assignment of funds. An apportionment is based on prescribed formulas in the law and consists of dividing authorized obligational authority for a specific program among the states.

Appropriation Period - The six years starting on July 1 of the appropriation year through June 30 of the reversion year that an encumbrance is eligible for reimbursement.

Appropriation Year - The state budget year (July 1 to June 30) that Legislature has approved for enactment and Local Programs Accounting (LPA) has authority to encumber funds.

Authorization to Proceed - Federal project funding eligibility approval for a particular phase of work by the Federal Highway Administration (FHWA).

Delegated Project - A lower risk project not selected as Projects of Division Interest project, for which 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 non-Interstate 3R projects, Interstate construction projects under $1 million, non-NHS projects, etc. Over 99% of Local Assistance projects are delegated in which Caltrans or the local agency has approval authority for most project level activities.

Disadvantaged Business Enterprise (DBE) - A for-profit small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens lawfully admitted permanent residents of the United States and (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged by the Small Business Administration (see CFR, Part 26).

E-76 - Federal-aid program form titled Authorization to Proceed. It provides federal authorization to begin reimbursable work for a specific phase of work.

Encumbrance - The commitment of funds based on an agreement that permits Caltrans to reimburse eligible costs for an approved phase of a project.

Federal Fiscal Year - The accounting period for the federal budget. The Federal Fiscal Year (FFY) is from October 1 until September 30. The FFY is designated by the calendar year in which it ends. For example, FFY 06 runs from October 1, 2005, until September 30, 2006.

Finance Letter - Project funding summary document required by Local Programs Accounting. It is prepared by the administering agency and submitted to Caltrans as backup information for the federal-aid/state project agreement.

Local Assistance Project - A local surface transportation project funded with federal and/or state funds for the operation, maintenance, and acquisition or development of facilities or land, provided the local entity retains ownership after completion of the project. Examples include:

- Project on Local Street with federal CMAQ funds
- Project on Local Street with RIP (STIP) funds

National Environmental Policy Act (NEPA) - Federal environmental law requiring federal agencies to consider the environmental impacts of their actions, evaluate least damaging alternatives and ensure decisions are made in the public's best interest based on a balanced consideration of the need for safe and efficient transportation.

Obligation - The federal government's legal commitment (promise) to pay or reimburse the states or other entities for the federal share of a project's eligible costs.

Obligation Authority (OA) -Total amount of federal funds that may be obligated in a FFY.

Overall Work Plan (OWP) - The OWP is the MPO/RTPA's transportation planning structure/plan for the state fiscal year, July 1 through June 30.

Preliminary Engineering (PE) -This phase includes all project initiation and development activities (including NEPA approval) undertaken through the completion of PS&E. It may include preliminary utility investigation and engineering work associated with utility relocation and pre-acquisition R/W activities such as estimating, title search and other studies necessary for project agreement approval and NEPA compliance.

Project End Date (PED) – The PED is defined as the date after which no additional costs may be incurred for a project. The PED is calculated by adding twelve (12) months to the estimated date of completing work for the phase of work requesting authorization.

Projects of Division Interest (PoDI) - Projects where the CADO has retained one or more 23 U.S.C. 106 (c) responsibilities. Are those projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives or advancing key initiatives. Major Projects are always designated as PoDIs.

Reversion Date - The last day that Caltrans may legally reimburse an encumbrance per state statute.

State Budget Authority - The state budget year and its period of reimbursement that is assigned to a particular state or federal encumbrance. State budget authority must be applied to all state and federal funds that are passed-through Caltrans to be eligible for reimbursement.

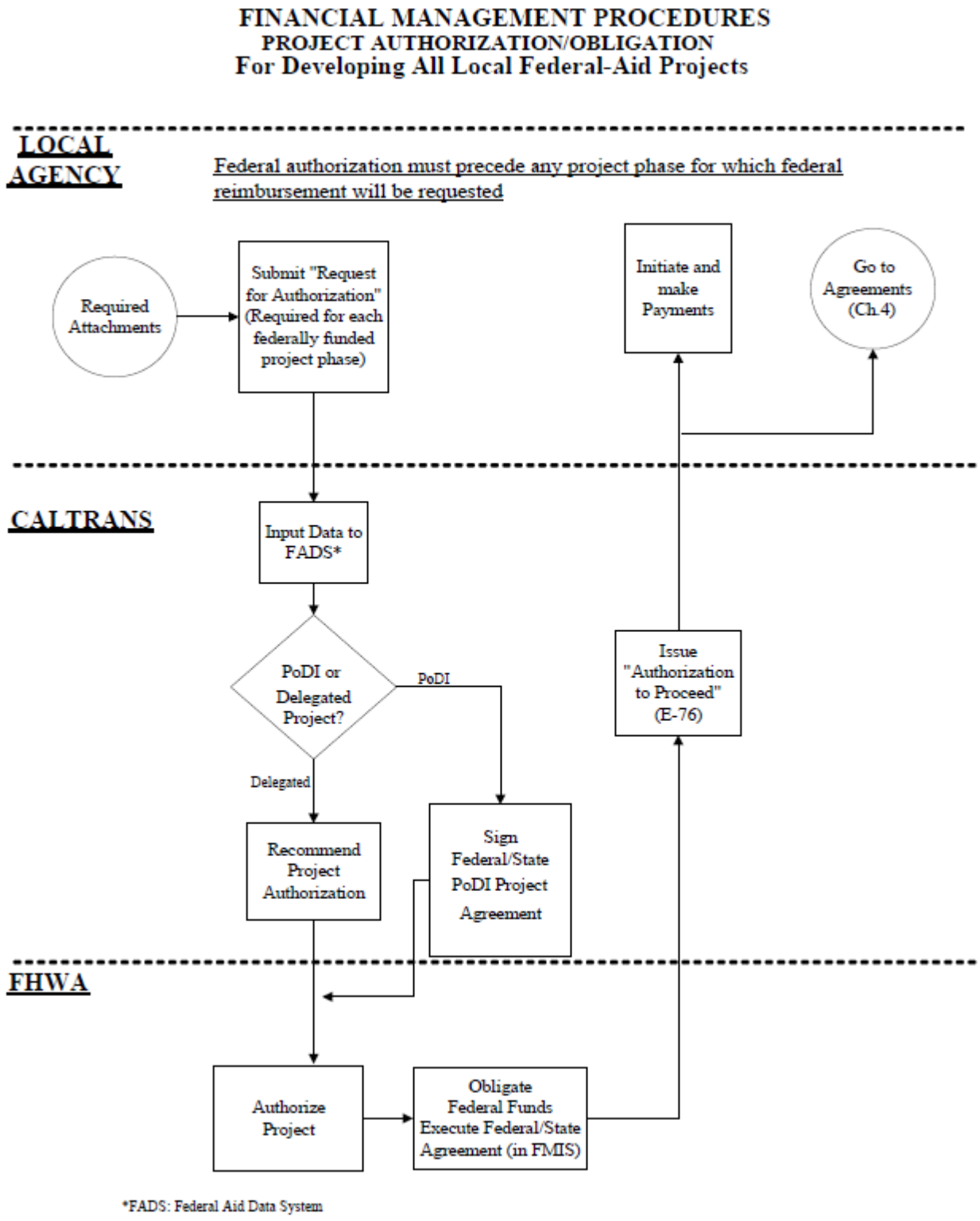

Figure 3-1: Projects of Division Interest/Delegated Project Identification Process

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. For further explanation, reference Chapter 13: Intelligent Transportation Systems (ITS) Program of the Local Assistance Program Guidelines (LAPG).

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 agencies:

- Highway Bridge Program (HBP)
- Local Seismic Safety Retrofit Program (LSSRP)
- 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 RTPA/MPO is responsible for project eligibility determination and financial constraint of the regional program. When a local agency 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 PL (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 Caltrans 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 Reviews), 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 local agency must have a Caltrans approved California Department of Transportation 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 local agency 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.

If a Cooperative Agreement is necessary for the project, it should be executed prior to requesting authorization to proceed (see https://dot.ca.gov/-/media/dot-media/programs/design/documents/pdpm-chapters.pdf#page=475).

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 agency's Request for Authorization to Proceed (see LAPM 3-A: Project Authorization/Adjustment Request and all required support documentations. The Caltrans District Local Assistance Office must submit to Caltrans Headquarters Division of Local Assistance (DLA), Exhibit 3-G: Federal Project Log Sheet with the appropriate documents attached.

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 for Delegated projects. More time will be required for Projects of Division Interest projects. Additional time may also 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 local agency for resubmittal.

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, PS&E) 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).

Only work performed after the date of federal authorization is eligible for federal reimbursement. 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.

Preliminary Engineering Phases Over Ten Years

Title 23 CFR 630.112(c)(2), as well as USC Title 23, Section 102 (b), requires the following for any federal-aid project: In the event that right-of-way acquisition for, or actual construction of, the road for which this Preliminary Engineering is undertaken is not started by the close of the

tenth fiscal year following the fiscal year in which the project is authorized, the local agency will repay to the FHWA the sum or sums of federal funds paid to the transportation department under the terms of the agreement.

FHWA Order 5020.1a published on June 8, 2018 provides policy direction on the repayment of federal-aid funds expended on Preliminary Engineering projects when reasonable progress has not been made toward R/W acquisition or construction. This directive also provides additional guidance clarifying when the FHWA can grant time extension.

Policy

- Projects that reach the status of PE over 10 years are out of compliance with 23 CFR 630.112(c)(2), as well as Section 102 (b) of USC Title 23, unless the project has an approved time extension. All invoice requests for a project out of compliance will cease to be paid. The project will be reviewed for closure and repayment of federal funds.
- Projects that have not moved to either R/W or CON in 8 years, exceeded the 10-year deadline, or approved with a time extension, will be posted on the Division of Local Assistance (DLA) website.
- For any project in the PE phase that is within two years of reaching the 10-year deadline, the local agency may either submit a Request for Authorization (E-76) for R/W or CON, request a time extension request, or withdraw the project. If the time extension is denied, the project will be closed and federal funds repaid.
- Local agencies must inform the District Local Assistance Engineer (DLAE) of projects that advance to the R/W or CON phase without the aid of federal funds to be closed and removed from the PE over 10 years list.

Local Agency (Agency)

- Monitor projects in the PE phase for compliance.
- Submit Request for Authorization (E-76) for R/W or CON funds, if PE phase is completed.
- Inform the DLAE when the project advances to R/W or CON phase using local or state funds only (No federal funds).
- Submit a time extension request if the PE phase cannot be completed before the 10-year deadline.
- Ensure projects progress to either the R/W or CON phase before reaching the 10-year deadline or before the approved time extension request expires.
- Submit status update of approved projects to the DLAE at the beginning of each FFY that the time extension is in place.
- For denied time extension requests, close project and repay federal funds.
- Coordinate with the DLAE.
- Submit E-76 for R/W or CON, withdraw the project, or submit time extension request to DLAE 120 days before the end of the tenth fiscal year.

Time Extension Requests

Justifications for time extensions should be unforeseeable and beyond the agency's control. Shifting political priorities, insufficient transportation budgets, additions to the scope of work, and staffing issues are not considered acceptable justification for a time extension request.

Some examples of acceptable justifications include:

- Litigation resulting in delay or stoppage of preliminary project design.
- Complex project consultations involving Federal, State and local agencies, as well as sovereign nations.
- Congressional Earmarks requiring review by FHWA.
- Change in the project's purpose and need due to the public involvement process.
- Utilization of a unique implementation or funding approach that the administering agency is not accustomed to carrying out, such as development of public-private partnerships or other innovative financing strategies to help finance the project.
- Delay caused due to environmental findings or complications with the environmental studies.

All projects with an approved time extension are expected to:

- Proceed to the R/W or CON phase prior to expiration of the time extension
- Submit a status update at the beginning of each FFY the time extension is in place
- Invoice against the federal funds in the timeframes outlined in 23 CFR 630.106 (5) and LAPM Chapter 5: Invoicing, to avoid inactivity

Time Extension requests are accepted continually throughout the year.

FHWA requires submittal of the following items with a time extension request:

Provided by Local Agency:

- Time Extension Request Form
- Applicable backup documentation for reason of delay
- Chronology of events leading to the delay (if litigation, supply a copy of the summary of the actual litigation documents filed with the acceptance date and stamp by the Court system)
- Updated schedule of future milestones (i.e., PE complete, NEPA approval, Final Design completion, construction award, etc.) helps demonstrate agency's commitment to completing the project
- Current Finance Letter Issued
- Prior FHWA decision letters on time extension request, if applicable

Provided by District DLAEs:

- Copy of pending E-76 requesting funds
- Copy of initial E-76 for project
- Current project programing (FTIP)

- HBP-Program Listings for FTIP/FSTIP (compiled if Structures Project)

Provided by PE>10 Projects Coordinator:

- FMIS printouts showing project authorizations, expenditures and balances

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 Intelligent Transportation Systems (ITS) projects, PE includes Systems Engineering, equipment, software development, and use of a Systems Manager or Systems Integrator (see Chapter 13 Intelligent Transportation Systems (ITS) Program, of the LAPG 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 (formerly Minor) ITS projects can undergo the traditional one PE phase authorization and will not require FHWA approval of the SERF and SEMP. However, the local agency 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.

Right of Way

Eligible Right of Way (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 local agency’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.

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.

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.

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, 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 and submittal of a draft Project Management Plan is required prior to environmental approval. For major projects, the Final Project Management Plan is due 90 days after the environmental decision document (i.e., FONSI or ROD). A Cost Estimate is required to be included in each Financial Plan. Both the Financial Plan and Project Management Plan are to be submitted to the DLAE for FHWA approval. The requirements for both of these 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.

It is highly recommended that local agencies use 15% as a guide for estimating CE costs and maintain justification for higher CE costs. CE costs in excess of 15% on federally funded projects selected and programmed directly by Caltrans will need justification by local agencies and approval by the DLAEs. See LAPM Chapter 12: Plan, Specifications & Estimate, Section 12.12: Estimate for more information on CE.

If Caltrans source inspection services will be requested, the local agency must submit/justify their request (refer to Exhibit 16-V: Source Inspection Request to District Local Assistance Engineer (DLAE)) at least 30 days prior to local agency 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 (see Quality Assurance Program).

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

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. For example, SAFETEA-LU mandated an allocation of 10-30% of the Safe Route to School Program (SRTS) funds to be used for non-infrastructure related activities. Other federal-aid funding programs that have been used for non-infrastructure projects are ATP and Congestion Mitigation and Air Quality (CMAQ) programs. 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 Caltrans District Local Assistance Engineer 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 shall 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 at: https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms.

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.

Project End Date

The Period of Performance is defined as the time frame during which eligible federal project costs can be incurred. The beginning of the Period of Performance is established when the project's first authorization (E-76) is approved by FHWA. The end of the Period of Performance is when the agency has finished incurring federally reimbursable costs. As a result of these eligible costs being incurred within the Period of Performance, they are eligible for reimbursement.

The Project End Date (PED) is the date that an agency must estimate in order to identify the end of the project's Period of Performance. It is defined as the date after which no additional costs may be incurred for an authorized phase of work and coincides with when the agency submits its complete and accurate Final Report of Expenditures (FROE) to the District Local Assistance Engineer (DLAE). Any costs incurred after this date will not be eligible for federal reimbursement. The PED is established by adding twelve (12) months to the local agency'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. Upon adding a future phase of work, the local agency must also revise the PED. Revisions to the PED require Caltrans concurrence and FHW A approval. 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.

Establishing the PED

Effective immediately, local agencies are required to estimate the PED and include it at the time of their authorization request. The PED is required to be shown on the LAPM 3-A: Project Authorization/Adjustment Request and submitted with every Request for Authorization package for the project. When preparing the E-76, the DLAE will enter this date into the Project End Date field in the Caltrans Federal Aid Data System (FADS). After Caltrans concurrence and FHWA approval, Caltrans will notify the local agency of the established PED along with the project authorization.

Revising the PED

The local agency is expected to monitor the progress of its project. If the need arises, the local agency may need to revise the PED to accurately reflect the amount of time needed to complete the project or phase of the project. This is readily done and documented as part of an agency'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. While working within a particular phase of work, however, to request a revision to the PED, the local agency must submit an updated LAPM 3-A and adequate justification to the District Local Assistance Engineer (DLAE). 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 local agency. This documentation must be submitted as a separate request to the DLAE. Revisions to the PED without Caltrans concurrence and FHWA approval may result in costs not being eligible for reimbursement.

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 23 for detailed procedures.

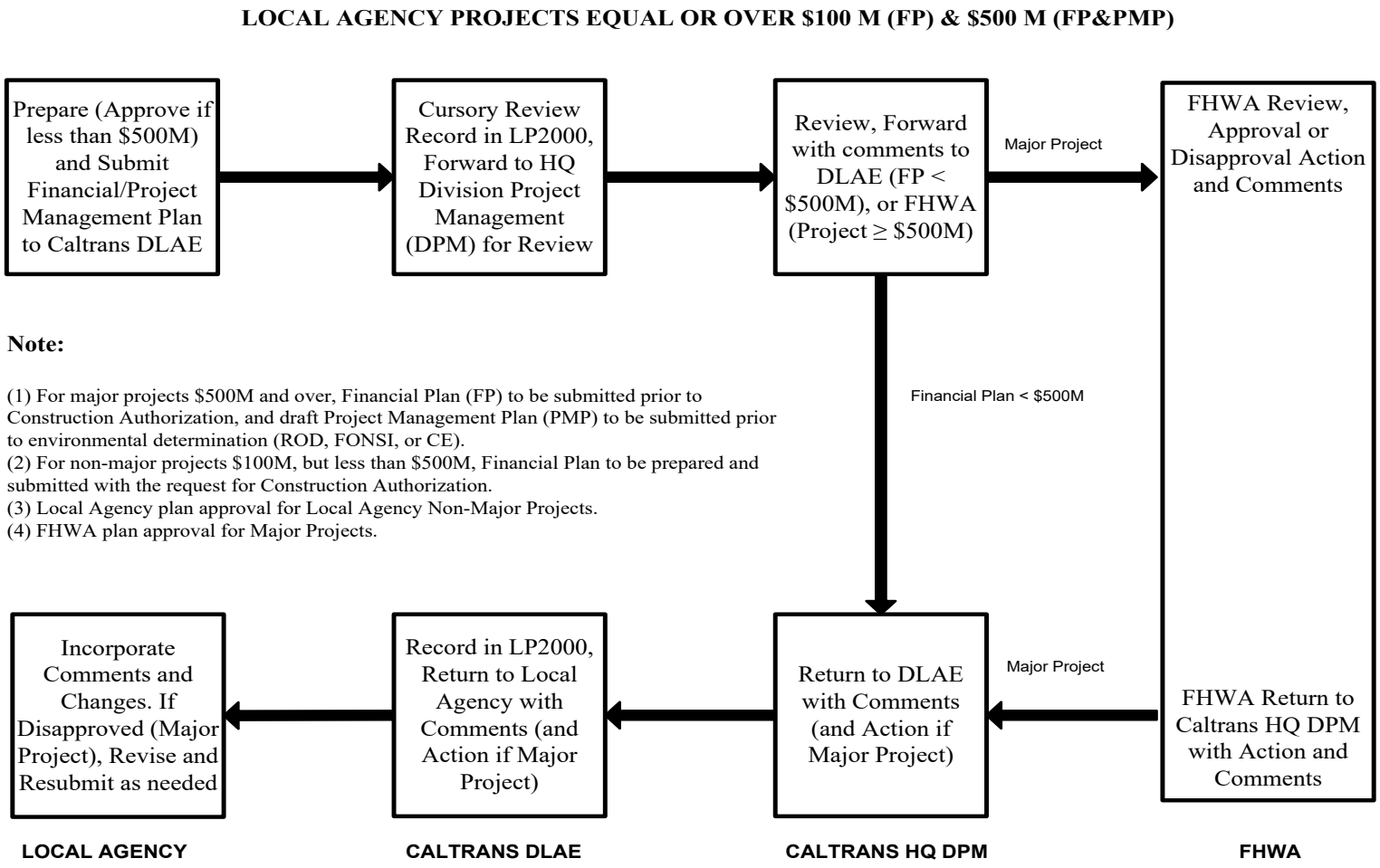

Figure 3-2: Major Federal-aid Project Flowchart

3.4 ADMINISTRATIVE PROCEDURES

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

Upon receipt of a complete and acceptable Local Agency 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 the FADS database. The Caltrans District Local Assistance Office then transmits the E-76 project file and required backup information to Caltrans Headquarters 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 (see Exhibit 3-G: Federal Project Log Sheet). The DLA Area Engineer recommends FHWA approval of Delegated or Projects of Division Interest projects and then transmits the E-76 to FHWA (California Division). FHWA approves/authorizes all projects and transmits all federally funded project records to FMIS.

Upon the federal obligation of funds, the Caltrans 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 local agency 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.

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 their 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 3-3: Capital Subvention Reimbursement Allocation and De-Allocation Process.

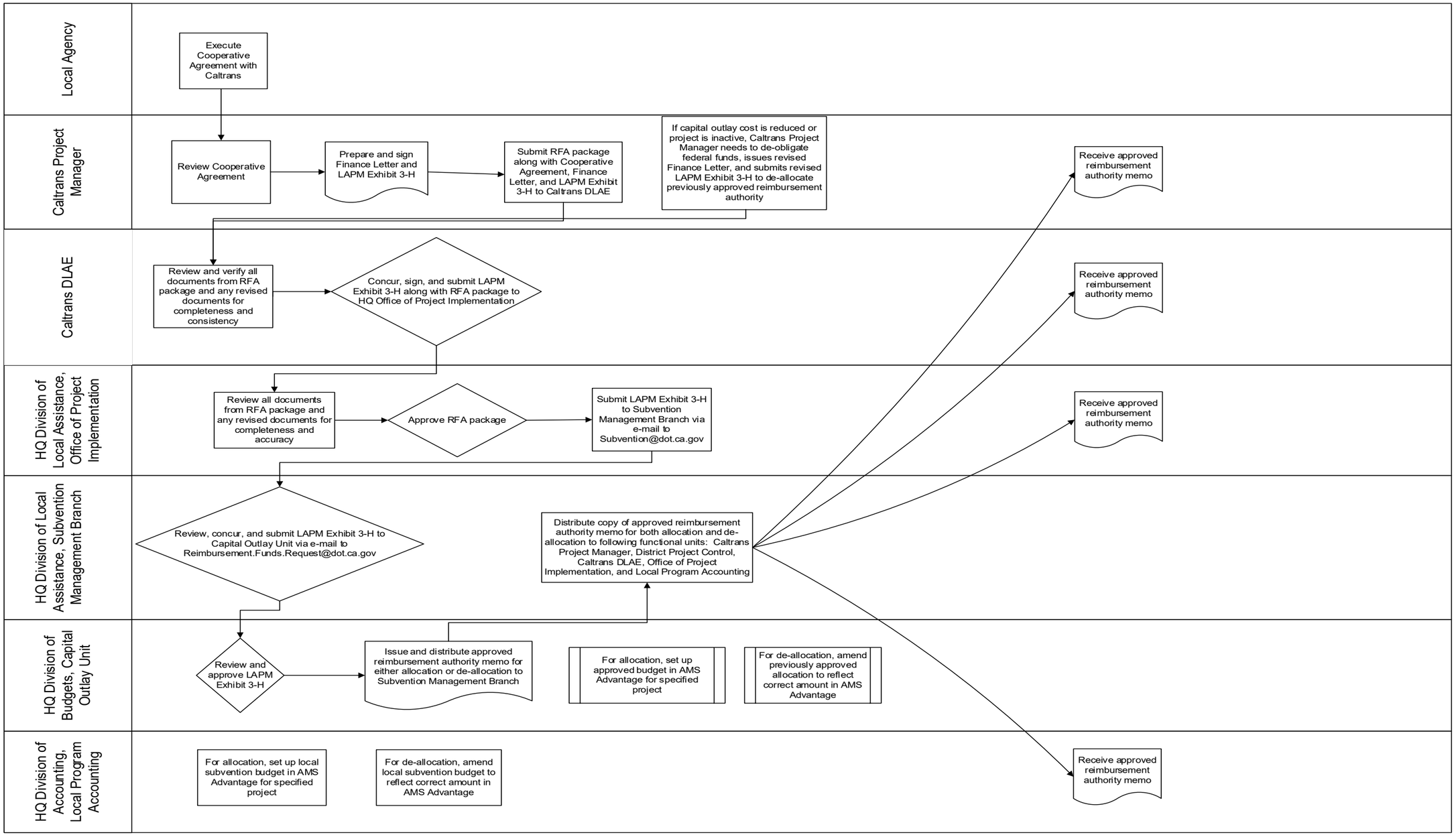

Figure 3-3: Capital Subvention Reimbursement Allocation and DE-Allocation Process

3.5 Allocation, Authorization, Encumbrance, & Reimbursement

The obligation of federal funds is a commitment by the FHWA to reserve the authorized federal funds for the project. The 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.

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 LPA as support documentation for the project funding agreement. The Finance Letter identifies:

- Project reference data such as responsible and administering agency(ies), 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).
- Local agency certification and signature.
- Project specific remarks.

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.

In an effort 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 a local agency 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 Caltrans, Local Programs Accounting (LPA) 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 local agency may apply for a Cooperative Work Agreement (CWA) to extend the liquidation period for up to two years. The local agency 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 local agency chooses not to apply for a CWA and the appropriation period lapses, the local agency 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 a local agency 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.

Section 630.106 of Title 23 (Highways) of the United States Code of Federal Regulations (CFR) stipulates:

1. The federal-aid share of eligible project costs shall 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.

Administrative Rules

For Delegated projects, Caltrans 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 (Projects of Division Interest projects, Historic Bridge, and so forth) 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.

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 local agency 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, a local agency 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 local agency will use its own funds to perform work eligible for future federal reimbursement. The local agency 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 local agency 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 previously HBRRP)
- 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 local agency also must be executed and/or Finance Letter signed/approved by Caltrans before a local agency 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 nonfederal 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 (California Division). The project sponsor must submit written taper match plan to the DLA for review. The project sponsor shall 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.

The 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 (California Division). 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, local agency 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 shall 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. For more information refer to FHWA's Innovative Finance Primer Chapter 2 Innovative Management of Federal Funds, located at: http://www.fhwa.dot.gov/innovativefinance/ifp/innoman.htm.

3.10 Toll Credit in Lieu of Non-Federal Match

Section 1508 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) as established under Section 120(i) of the Title 23 of the United States Code (USC) 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 Emergency Relief (ER) Program) and for transit programs authorized by Chapter 53 of Title 49 of the USC.

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 Local Highway Bridge Program (HBP) projects and Highway Safety Improvement Program (HSIP) projects because all available funds have been programmed and there are more needs than funding capacity. However, local agencies may use other federal funding to dual-fund both On-System Local HBP Projects and 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.

Two websites have been added to the policy to assist local agencies that wish to use toll credits for the federal Planning and Federal Transit Administration (FTA) funds:

- http://www.dot.ca.gov/hq/tpp/offices/orip/owp/index_files/Final_2011_RPH.pdf
- http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/5311/transittollcreditsrev012611.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 shall 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 Highway Safety Improvement Program (HSIP) projects (see Scenario C below).

Scenario C – Toll Credit with Dual Federal Funding

This scenario is for an 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 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 Highway Safety Improvement Program (HSIP) projects.

Local 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 check when using DEMO or any other Federal funds in-lieu of the Local match.

Figure 3-4: Toll Credit Example

3.11 FTA TRANSFER

Under provisions of the ISTEA of 1991, continued by the Transportation Equity Act for the 21st Century (TEA-21), and superseded by the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), state, regional, and local agencies have greater 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.

Section 134(k) of Title 23 (Highways) of the United States Code (USC) requires that Title 23 funds made available for public transit projects, typically administered by the FTA, be transferred from the 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 shall 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 local agency 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.

Highway Funds Eligible for Transfer

From a procedural perspective, local assistance federal funds, which can be transferred to FTA, fall into 2 categories: 1) Local federal-aid funds, and 2) Federal STIP funds. The Caltrans DLA Office and Headquarters DLA process the transfer of local federal-aid funds and Transportation Enhancements (TE) funds. The Headquarters Division of Mass Transportation (DMT) and Office of Federal Resources (OFR) process Federal STIP fund transfers except for STIP TE 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, discuss later) 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.
- FHWA Discretionary funds include High Priority Demonstration, Ferry Boat Discretionary, Federal Lands Highway Program, and Transportation and Community and System Preservation Pilot Program (TCSP) programs. 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.

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 (USC). 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 Special Needs of Elderly Individuals 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 Program

- **Section 5307 Grant Program procedures**
  Are used by local agencies 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 local agency 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). Noncertified agencies must find a certified project sponsor.
- **Section 5311 – Non-Urbanized Area Formula 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 local agencies 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 – Elderly and Persons 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 local agency and works directly with FTA. Section 5310 funds typically are used to purchase vans and small buses for the elderly and persons with disabilities.

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 (Washington D.C.) until the FTA submitted project invoices that were reimbursed by the FHWA.

The 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 the FHWA (California Division) 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 RTPA/MPO 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.

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 TE 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 a 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 RTPA/MPO 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 were 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 RTPA/MPO regions by formula. These funds include RSTP and CMAQ funds. These funds are programmed to local agencies for specific projects through the FTIP/FSTIP processes. Both Caltrans and the 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. Please refer to the Division of Local Assistance Home Page for balances.

3.13 REFERENCES

23 CFR 635.301 et. seq.
http://www.fhwa.dot.gov/legsregs/legislat.htm

23 CFR 630.106
http://www.dot.ca.gov/hq/LocalPrograms/PE_over_10yrs/23cfr630_106.pdf

23 CFR 645
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr645_main_02.tpl

23 CFR 940
http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0940.htm

USC 134(k)
https://www.fhwa.dot.gov/map21/docs/title23usc.pdf

23 USC 120(j)
http://www.fhwa.dot.gov/map21/docs/title23usc.pdf

49 USC, Section 5301, et. seq. (Federal Transit Laws)
https://www.transit.dot.gov/regulations-and-guidance/legislation/title-49-ch-53/title-_49-ch-53

A Guide to Federal-Aid, Programs, Projects and Other Uses of Highway Funds, Federal Publication No. FHWA-IF-99-006, dated May 1999
https://www.fhwa.dot.gov/programadmin/if99006.cfm

Federal-Aid Data System Instructions 06/06/02
http://www.dot.ca.gov/hq/LocalPrograms/lpp/98-09/LPP06-04.pdf

Federal Uniform Relocation Assistance and Real Property Acquisition Act
http://www.dot.ca.gov/hq/row/pubs/residential_english.pdf

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

Local Assistance Program Guidelines (LAPG) Website:
https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-program-guidelines-lapg

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

Chapter 4 **Agreements**

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EXHIBITS

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 4-B: Local Agency Agreement Execution Checklist
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

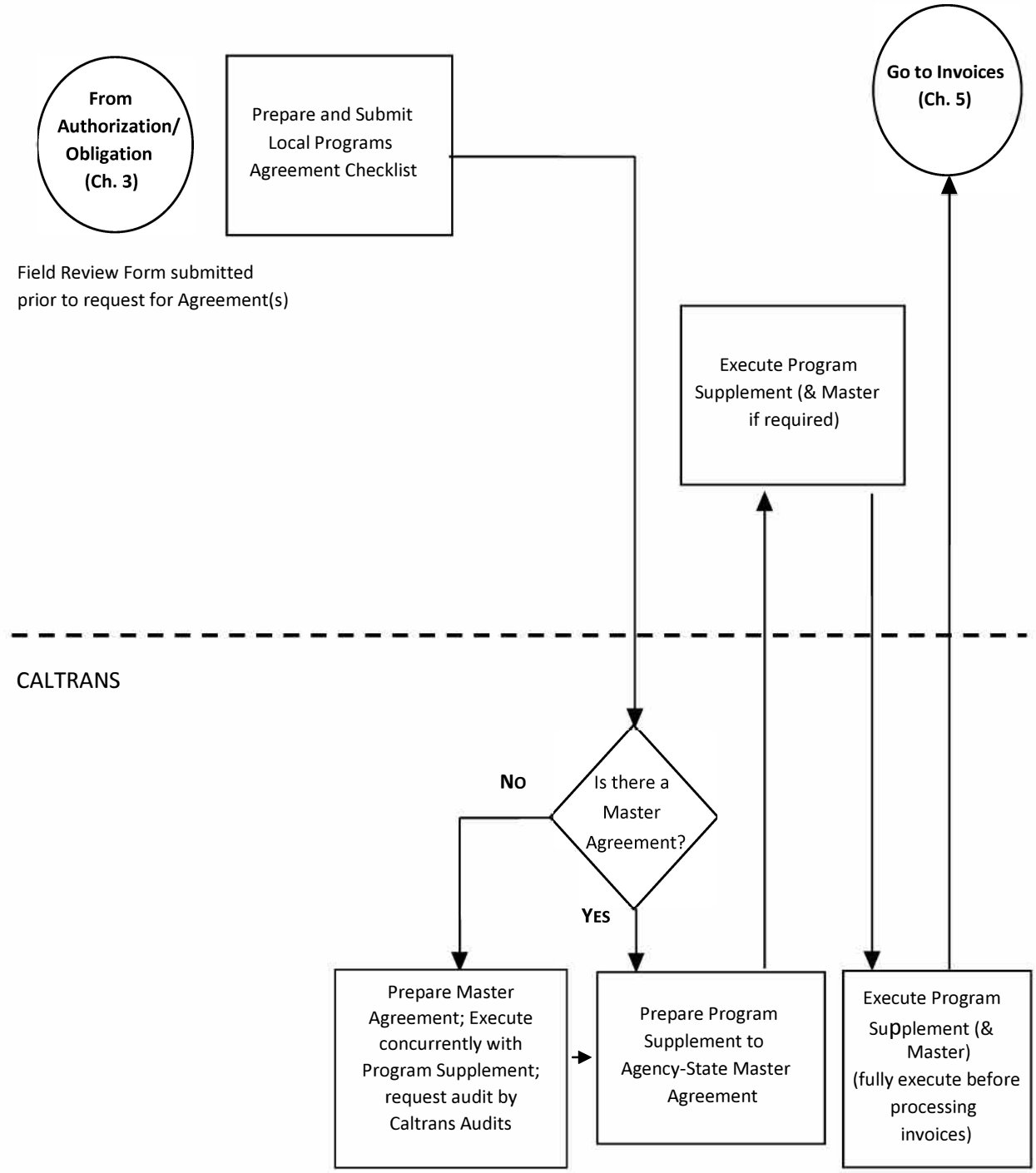

Figure 4-1: Developing Local Federal-Aid and State-Funded Projects

Chapter 4 **Agreements**

4.1 INTRODUCTION

The Federal-Aid Highway Program and most local programs funded from the State Highway Account are reimbursable programs. Agreements (contracts) must be executed in order to pay funds to the local agency. The Division of Local Assistance (DLA) prepares and sends these agreements directly to the local agency. The agreements must be executed before any invoices for payment can be processed.

This discussion applies to all local agency projects receiving federal-aid highway project funds administered by FHWA and State Highway Account funds administered by the DLA as discussed in this chapter.

4.2 GENERAL AGREEMENTS

Local (Administering)[1] Agency-State Master Agreement (Master Agreement) – An agreement between a city, county, or other local public agency and the State defining the general terms and conditions which must be met to receive federal-aid or state funds for the following programs:

- Federal-aid Highway Program
- State-only Funded Projects

Master Agreement

A Master Agreement is required with a local agency whenever federal or state funds are to be used on a local project funded from the programs noted above.

In the Master Agreement, a local agency 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 agency when it begins its first federal-aid or state funded project. The Local Agency-State Master Agreements are occasionally updated and re-executed to account for changes in laws and policies.

The titles for the Master Agreements vary with the program as follows:

1. Federal-Aid Highway Program
    - Local Agency-State Agreement for Federal-Aid Projects, or
    - Administering Agency-State Agreement for Federal-Aid Projects[1]
2. State-only Funded Projects
    - Administering Agency-State Agreement for State-Funded Projects (with no federal funds)

Program Supplement Agreement

The supplement to the Master Agreement formalizes the financial responsibilities and provisions for a specific federal-aid or state funded project in the categories defined above. This program supplement identifies the types and amounts of federal, state and local funds used to finance

[1] The latter title is being used for new or updated agreements executed after ISTEA.

the locally sponsored project. It is the contractual basis for the state to pay the local agency for work done.

Special covenants or clauses in the agreement define the agencies' 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 Program Supplement Agreement has been fully executed. Invoices shall 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 pattern. These are briefly described below. Refer to the Local Assistance Program Guidelines for full details of the agreement process 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 S&H 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 the Local Assistance Program Guidelines (LAPG) Chapter 18: Optional Federal Exchange and State Match Programs for details).

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

Bicycle Transportation Account Agreement

Applications are submitted to the DLA for annual project selection. Upon selection, agreements for all projects for the year are prepared and submitted to the Accounting Service Center for the encumbrance of State funds and then processed for execution. The title for this agreement is Local Agency-State Agreement, Bicycle Transportation Account Project.

Proposition 116: Bicycle Project Agreement

A fund allocation vote is required by the California Transportation Commission (CTC) for each project. When this is complete, Caltrans DLA prepares a Fund Transfer Agreement for execution by the local agency and state. The full agreement title is Fund Transfer Agreement, Clean Air and Transit Improvement Act of 1990 (Proposition 116) Bond Funds.

Environmental Enhancement and Mitigation (EEM) Project Agreements

After program adoption, a fund allocation vote (2nd vote) is required by the CTC for each project. When this is complete, Caltrans DLA prepares an Applicant-State Agreement for execution by the applicant and state. If acquisition of real property is to occur, an Agreement Declaring Restrictive Covenants is also required (see LAPG Chapter 20: Environmental Enhancement and Mitigation (EEM) Program for agreement format and processing details).

4.4 Process and Procedure Processing

A new Locode and Master Agreement will normally be requested by local agency soon after their first Local Assistance project is selected and programmed for inclusion or amended into the FTIP/FSTIP or STIP. Neither a Master Agreement nor project specific requests or agreements will be processed until after the associated pre-award audit process is completed and no findings (if there are any) remain (see LAPM Chapter 3: Project Authorization, Section 3.2: Prior to Federal Authorization).

All project specific agreements are contingent on budget actions by the federal and state governments.

Federal-aid projects must be authorized and have funds obligated before an agreement is prepared. For projects in the State Transportation Improvement Program (STIP), Transportation Congestion Relief Program (TCRP), Conservation Lands, Statewide Transportation Enhancements (STE) Program, and Environmental Enhancement and Mitigation (EEM) Program, an allocation vote is required by the CTC. Caltrans does not prepare the agreement until the authorization, obligation and vote allocation are complete.

An agreement is prepared only once for each project after the initial authorization/obligation. In certain cases, more than one agreement is required. In such instances, the DLA will identify the need and prepare a revised agreement.

Processing

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

A local agency 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 can save significant amounts of work and time and should be considered by any agency, which constructs 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 local agency and Local Programs Accounting at which time invoices may then be submitted for payment.

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

Section 106(a) of Title 23 of the United States Code (USC), as revised under the Transportation Equity Act for the 21st Century (TEA-21) and as superseded by the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) combined the project authorization, obligation of funds, and the execution of the federal-aid project agreement into a single action. To support SAFETEA-LU, the Federal-Aid Data System (FADS) was upgraded and implemented this new federal-aid processing requirement. Under the upgraded FADS, one electronic form entitled Authorization to Proceed (E-76) replaced the PR-2, PR-2A, and FNM-

76. The E-76 now acts as both project authorization and federal-aid project agreement with Caltrans.

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 to agencies by DLA but are developed and processed as defined in other Caltrans manuals and documents. The local agency 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 to the railroad.

The Program Supplement Agreements for these federal-aid projects are processed as described previously.

4.7 REFERENCES

23 U.S.C. 630.301 et. Seq
https://www.gpo.gov/fdsys/granule/CFR-1999-title23-vol1/CFR-1999-title23-vol1-sec630-301

Section 106(a) United Codes revised under TEA-21
http://www.fhwa.dot.gov/Tea21/oversite.htm

Chapter 5 **Invoicing**

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EXHIBITS

Exhibits applicable to this Chapter can be found here:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 5-A: Federal -Aid Invoice (Except for STIP and ATP Projects)
Exhibit 5-B: Sample Federal-Aid Invoice With Two Appropriations & Different Reimbursement Rates (Except for STIP and ATP Projects)
Exhibit 5-C: State Project Invoice
Exhibit 5-D: Sample Right of Way Invoice
Exhibit 5-E: Sample of “STIP or ATP Projects” Federal Invoice
Exhibit 5-F: Sample of “STIP or ATP Projects” State Invoice
Exhibit 5-G: Sample Alternative Payment Procedure
Exhibit 5-I: Sample Indirect Cost Rate Proposal
Exhibit 5-J: Local Agency Invoice Review Checklist
Exhibit 5-K: Billing Summaries-Support Rate
Exhibit 5-L: Billing Summary Instructions
Exhibit 5-M: Sample Scenarios – Pro Rata vs. Lump Sum Agreements

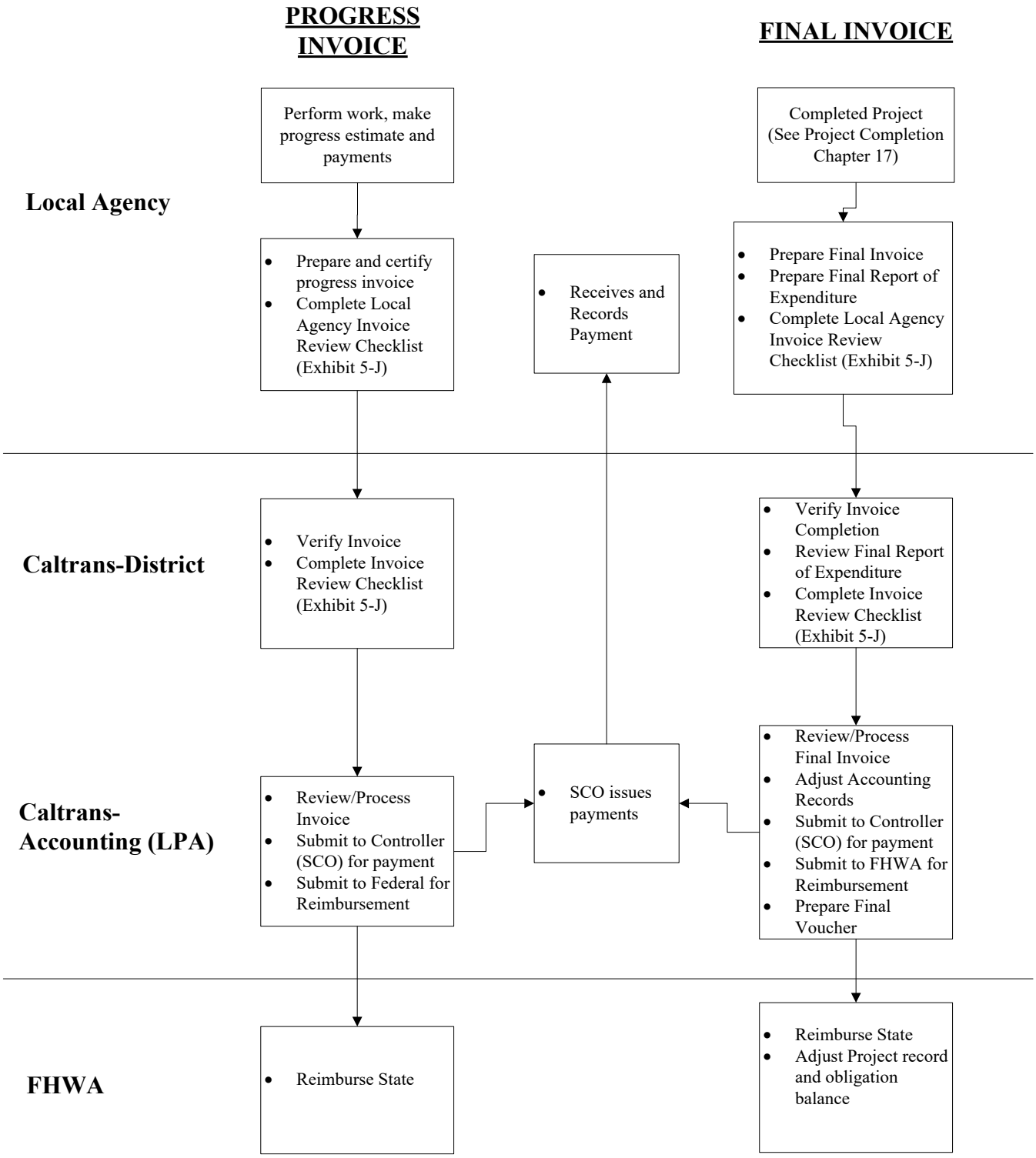

Figure 5-1: Invoice Flowchart

Chapter 5 **Invoicing**

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

5.1 Tracking Status of Invoices

As invoices are processed by LPA, local agencies can monitor the status of their invoices by viewing the data at the Vendor Payment History website. 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:

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.

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 local agency 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 local agency (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, please see LAPM Chapter 4: Agreements.

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 the Federal Highway Administration (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 local agency 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 Emergency Opening and Preliminary Engineering work that is part of the Emergency Relief program. See Chapter 11: Emergency Relief Program of the Local Assistance Program Guidelines (LAPG) for additional details.

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

Invoice Submittal

The local agency 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 local agency 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.

Towards the end of the state fiscal year (June 30), it is very important for local agencies 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 local agencies 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.

Award Package

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

If the DLAE does not receive a copy of the Award Package with the first invoice for the construction phase, the invoice will be returned to the local agency unpaid. No award package is required if the local agency utilizes only its own work forces. However, an approved Public Interest Finding (PIF) document must be included with the first invoice.

The Award Package for Federal-Aid funded construction contracts shall consist of the documents outlined in Award Package (see LAPM Chapter 15: Advertise and Award Project, Section 15.7: Award Package).

1. Exhibit 15-L with attachments
2. Exhibit 15-M: Detail Estimate
3. LAPM 3-A: Project Authorization/Adjustment Request
4. Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist
5. Exhibit 15-G: Construction Contract DBE Commitment

Award Package for State Transportation Improvement Program (STIP) or Active Transportation Program (ATP) projects

The Award Package for state-only funded construction contracts shall consist of the completed Award Information for STIP Projects (see LAPG Chapter 23: Local Agency STIP Projects, Exhibit 23-A, or see LAPG Chapter 22: Award Information for ATP Projects, Exhibit 22-A).

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 list of ineligible costs see LAPM Chapter 16: Administer Construction Contracts, Section 16.10: Change Order (CO).

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:
   - Environmental Studies and Permits (E&P)
   - 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 local agencies if it is used for a valid Title 23 purpose. It is the local agency'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.

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 Subpart E – Cost Principles and 2 CFR 439 – Equipment and other capital expenditures for additional information regarding reasonable and allowable costs and equipment thresholds.

Indirect Costs

With the enactment of the Transportation Equity Act for the 21st Century (TEA-21) on June 9, 1998, and the issuance of FHWA Guidance 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards, indirect costs are eligible for federal reimbursement. Should any department, division or other organization unit within the local agency seek reimbursement of their indirect costs, they must receive an Approval/Acceptance Letter of the local agency's Indirect Cost Rate Proposal (ICRP)/Indirect Cost Allocation Plan (ICAP) for the fiscal year(s) involved from Caltrans Independent Office of Audits and Investigations (IOAI) 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. See Section 5.13: Obtaining Approval for Indirect Costs in this chapter for details on obtaining approval/acceptance of ICRP/ICAP.

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

Note: Some programs may have special requirements or restrictions for indirect costs. As examples; the Environmental Enhancement and Mitigation (EEM) program does not allow reimbursement for indirect costs, and the Freeway Service Patrol program does not allow the use of state funds for administrative purposes pursuant to Streets and Highways Code *Section 2564*.

The sample invoice exhibits in Exhibits 5-A: Sample Federal-Aid Invoice (Except for STIP and ATP projects) to Exhibit 5-G: Sample Alternative Payment Procedure shows how the indirect costs should be billed.

Underfunded Projects

When local agency 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 $1,000,000.00
- Total federal funds are $750,000.00
- The Federal Appropriation Code is Q240
- The reimbursement ratio would be: $750,000.00/$1,000,000.00 = 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%.

Pro Rata vs. Lump Sum

23 Code of Federal Regulations (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, local agencies 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 630.1 06(f)(2). Requests for award adjustment must be submitted by a local agency 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 local agency'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 Fiscal Management Information System, the same share method shall 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 local agencies 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, a local agency may consider programming Local Advance Construction in the project Federal Transportation Improvement Program/ Federal Statewide Transportation Improvement Program prior to a request for authorization for the respective phase of work.

Exhibit 5-M: Sample Scenarios - Pro Rata vs. Lump Sum Agreements provides 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). A Local Agency 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. A Local Agency 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

Local agency 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 LPA. To receive reimbursement ten days sooner, see Electronic Fund Transfer (EFT) Reimbursement Method below.

Local agency 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.

Payment in Arrears

State and federal law requires that all federal and most state funded local agency project payments be done on a reimbursement basis. Therefore, the local agency must incur and pay for project costs prior to invoicing Caltrans for reimbursement. The local agency 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.

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 LPA 30 days prior to closing escrow for the purchase of the property. LPA 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. Sixty days after all expenditures have been made by the local agency; they must submit a Final Report of Expenditures, 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 local agencies 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 Division of Local Assistance'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.

Electronic Fund Transfer (EFT) Reimbursement Method

Caltrans offers an EFT option to local agencies. Participation in the EFT program is limited to the local agencies 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 local agency's designated bank account.

1. **EFT Processing Time**

   The processing time within LPA 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, LPA 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 local agency'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 local agency's invoice payments to their banking account. Therefore, it is very important that the local agencies verify with their financial institution that EFT payments are allowable.

Download the EFT Enrollment Form or request it from LPA if a form cannot be obtained.

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

If the local agency has done business with Caltrans and has several accounts with Caltrans (multiple remittance addresses in Caltrans accounting system), the local agency'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 LPA 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 local agency must complete a separate Enrollment Form. Sections I and II of the Enrollment Form must be filled out by the local agency by typing or printing the following information:

- Name of the local agency and the address that will receive the Automated Clearing House (ACH) payment
- The local agency 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 local agency'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 Local Program Accounting.

Caltrans will process the EFT Enrollment packet and work with the local agency's financial institution to establish the EFT payment processing of local agency 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 local agency invoices the usual way. Once the EFT information has been verified, LPA 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

The exhibits to this chapter contain a number of sample invoices and should cover the majority of projects. Local agencies are encouraged to cut and paste the samples to fit their specific need while maintaining the integrity of the invoice format. If there are significant questions, contact LPA through the DLAE for assistance. The sample invoices were designed so that only the information absolutely needed has been requested. Invoices with significant errors will be returned to the local agencies for correction without being processed for payment. At a minimum, an invoice package includes invoice, Exhibit 5-J: Local Agency Invoice Review Checklist, and Exhibit 5-K: Billing Summary. Detailed instructions for preparing invoices for reimbursements are outlined below. Some Programs have specific guidelines for acceptable invoicing formats or procedures (i.e., Bicycle Transportation Account, Environmental Enhancement and Mitigation, Federal Exchange/State Match, Freeway Services Patrol, Planning Programming Monitoring). It is NOT the intention of this chapter to supersede these program-specific guidelines on invoice formats, however, checklists should be submitted with all invoice.

General Guidelines

1. The local agency 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. Invoices must be submitted on local agency letterhead with the local agency's address. If there is a change of the remittance address, the local agency must notify LPA in writing, so that LPA can update the Payee Data Record file in the Caltrans financial system to reflect the new remittance address. Verbal requests cannot be processed.

3. The first time that a local agency 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.
4. Progress and final invoices are submitted directly to the DLAE, and should include, an original invoice and two copies (see Table 5-1).
5. Final invoices must include the Final Report of Expenditures (FROE) package. The DLAE verifies the project completion and approves payment before forwarding the Final Report of Expenditures package, including the original and two copies of the final invoice to LPA. More information regarding final invoice procedures are 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.
6. For local STIP and ATP projects, the preliminary engineering phase must be separated into E&P and PS&E.
7. The first invoice for construction must include Exhibit 15-L: Local Agency Contract Award Checklist (for federally funded projects). State projects should include the Award Information checklist.
8. 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 local agency for locally acquired Right of Way, a Right of Way Report of Expenditures is needed.
9. Invoices must have a current date when sent to the district or LPA. If for any reason an invoice is returned to the local agency, the resubmitted invoice must have a revised current date and number (e.g., rejected invoice 1 becomes 1A upon submittal).
10. Invoices must be certified and signed by the appropriate responsible persons in the local agency.
11. The certification statement on the invoice must be the same as shown on the sample invoice(s).
12. Invoices must list the name and phone number of the contact person should Caltrans staff need additional information about invoices.
13. Invoices must have two copies of the Billing Summary. Local agencies must maintain all supporting backup documentation for costs incurred and claimed for reimbursement in their project files (made available to DLAEs only upon request).

Table 5.3: Invoice Documents

Document	Agency Submits to DLAE	DLAE Submits to LPA	LPA Submits to SCO
Invoice	Original plus 2 copies	Original plus 1 copy	Original
Invoice Review Checklist	2 signed copies	1 signed copy by Agency & the DLAE	None
Billing Summary	2 copies	1 copy	None

Detailed Invoice Format

The invoice format may vary (see Exhibits 5-A, 5-B, 5-C, 5-D, 5-E, and 5-F), but the following information must be included:

1. Date of invoice. Invoices must have a current date. If an invoice is returned to the local agency for any reason, it must be re-dated when resubmitted to the district.
2. Billing number. This is a serially assigned number that begins with #1. This progress billing number allows LPA to determine that they have received all the invoices for the project. Corrected invoices will include a letter along with the serial number (e.g., 1A for a first revised invoice).
3. Invoice number. This invoice number is assigned by local agency's Account Receivable Accounting system, if applicable.
4. Federal-aid or state project number, e.g. prefix-project number, STPL-5012 (005), CML-5006 (089), ER-3632 (002), etc.
5. Local agency's Federal Tax Identification Number.
6. Date project accepted by the local agency (for final invoice only). Show On going if project is not completed.
7. Project Location.
8. Project Expenditure Authorization No. or Advantage project ID.
9. Local Agency/State Agreement, PSA numbers and date executed.
10. Phase of work headings such as Preliminary Engineering, Right of Way, Construction Engineering, Construction Contract. For STIP and ATP projects, the Preliminary Engineering phase must be segregated into E&P and PS&E.
11. Federal Appropriation codes such as Q240, Q110, etc.
12. Federal Authorization/Agreement date for each phase of work. Costs incurred prior to the Federal Authorization/Agreement date (E-76) are not eligible for federal reimbursement.
13. Time period for which claimed project participating costs were incurred and paid for each phase of work from the beginning of the project to date.

14. Cost breakdown by Federal Appropriation codes for Preliminary Engineering (E&P and PS&E for STIP and ATP projects), Right of Way, Construction Engineering and Construction phases as follows:
    - Total Indirect Costs of project to date, if claimed and approved by Caltrans IOAI by phases of work. Indirect Costs are described in Section 5.2: Requirements for Reimbursement. When calculating an Indirect Cost Rate, the most common Direct Cost Base used is direct salaries and wages plus fringe benefits. If this Direct Cost Base is used, when applying the Indirect Cost Rate, it should be applied to direct labor costs only (not to other direct costs, such as payment of construction contracts and Right of Way purchases).
    - Complete the Indirect Cost Calculation Section of the invoice and transfer the computed Indirect Costs to date to the front of the invoice.
    - Total direct costs of the project to date by phases of work. Direct costs are the labor, material, contract payments, and Right of Way acquisition for project-related activity.
    - Less total retention amount withheld from the contractor. Retention is not eligible for reimbursement until it has been paid to the contractor or deposited into an escrow account. At the end of the project and after all retention has been released, the amount should be zero.
    - Less liquidated damages.
    - Less nonparticipating costs to date.
    - Total federal participating costs to date. Participating costs are project costs paid for by the sponsoring local agency that are eligible for reimbursement in compliance with laws, regulations, and policies.
    - Less total federal participating costs shown on the previous invoice.
    - Change in participating costs.
    - State and/or federal reimbursement ratio. Federal reimbursement rate may vary depending on the type of funding used, i.e., 80%, 88.53%, etc. If state funds are matching the federal funds, the state reimbursement rate should be shown. If a federal project is not fully funded, see the discussion in Section 5.3: Reimbursement Project Costs, for detailed instructions on how to compute the reimbursement ratio.
    - When multiplying the change in participating costs by the reimbursement ratio, the result must be rounded down to the lowest cent. Federal rules do not allow rounding up.
    - Federal reimbursement ratio.
    - State reimbursement ratio.
    - Amount of the claim.
15. Certification statement, printed name, title, and signature of the local agency representative. The certification statement on the invoice must be the same as shown on the sample invoice(s).

16. Contact Name. Provide the name and phone number of the person Caltrans can contact if there are questions about the invoice.

Invoice Checklist

Local agencies are required to complete and sign Sections 1 & 2 of Exhibit 5-J: Local Agency Invoice Review Checklist and submit the checklist as part of the Invoice Package for each invoice. At a minimum, the invoice package includes:

- Exhibit 5-A: Sample Federal-Aid Invoice (Except for STIP Projects)
- Exhibit 5-J
- Exhibit 5-K: Billing Summary- Support Phases
- Additional documents as required by the Checklist

The DLAE will ensure that the checklist and appropriate documentation are included, will concur with Sections 1 & 2, and complete and sign Sections 3 & 4.

Provided Local Agencies 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 Exhibit 5-J prior to sending invoices to the district for reimbursement. Invoices with significant errors will be returned to the local agencies for correction.

5.6 Final Report of Expenditures & Final Invoice

The local agency must submit the Final Report of Expenditures, 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 Final Report of Expenditures must be submitted to the DLAE by April 1 of that year. The Final Report of Expenditures is to be signed by the person in responsible charge of the project for the local agency. After the DLAE approves the Final Report of Expenditures, including the final invoice, he/she will forward them to Local Programs Accounting for processing of the final invoice. Refer to LAPM Chapter 17: Project Completion for detailed instructions on completing the Final Report of Expenditures.

Note: For EEM projects, the final report (including the final invoice) must be submitted to the DLAE, 60 days prior to the expiration of the Budget Authority. This report provides key information required to initiate timely closure and payment.

If the final invoice is returned to the local agency 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 Final 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 local agency'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 local agency are more than the amount eligible for reimbursement, Accounting's Local and Reimbursement Final Vouchering Section will initiate an Accounts Receivable billing to the local agency for recovery of the overpayment.

5.8 Audit of Local Agency Expenditures

The local agency shall 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 local agency for a minimum period of three years from the date of the final payment by the state. Refer to 2 CFR 200.333 federal requirements for retention and access of records. Local agency expenditures for all Local Assistance programs are subject to financial and compliance audits by Caltrans IOAI or designee. Audits performed by IOAI may, at a minimum, include an audit of the local agency'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 local agency before finalizing the audit report.

Local agencies are also subject to the audit requirements of 2 CFR, Part 200. A single audit is required if an agency receives and spends more than $500,000 in federal funds from all sources in their fiscal year. For fiscal years beginning on or after January 1, 2015, the threshold for requiring a Single Audit increases to $750,000 per the federal Office of Management and Budget Circular A-133 Supplement 2014. Impacted agencies must send a copy of their single audit report to the SCO within nine months of the end of the agency's previous fiscal years.

5.9 Final Report of Expenditures on Projects Administered by the State

The final report of expenditures 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 local agency 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 local agency is responsible for preparing the Final Report of Expenditures 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 local agency funds expended for the project. The final expenditure of local agency funds is compared to the local agency 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 the 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 local agency 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 local agency 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 local agency 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 local agency for recovery of the required funds. If the deposit exceeds the agency's share of expenditures, the excess funds are refunded to the local agency.

5.12 Service Contracts

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

5.13 Obtaining Approval for Indirect Costs

At the discretion of the local agency, indirect costs submitted and accepted by Caltrans IOAI may be included when seeking reimbursement for their federal-aid transportation projects, as well as STIP and ATP projects, and state funded projects. Specifically, this applies to federally authorized work with costs incurred after June 9, 1998, as well as STIP and ATP projects, and state funded projects. However, any completed project with a Final Report of Expenditures will not be eligible for retroactive indirect cost reimbursement.

Computation of Indirect Cost Rates are based on:

- 2 CFR, Part 200, Subpart E (Cost Principles), and Appendices V & VII for fiscal years beginning after December 31, 2014, 2 CFR, - 225 for fiscal years beginning before December 31, 2014; and
- Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government (ASMB C-10), issued by the United States Department of Health and Human Services.

Submission of Proposal

ICRPs are only applicable for the specific year(s) being submitted and only for the specific local agency division, department or segment submitted. All local agency divisions, departments or segments must have an approved indirect cost rate prior to billing for and being reimbursed the costs. For example; the local agency's Department of Engineering would have its own separately approved indirect cost rate if doing work on a federal-aid project for the local agency's Department of Public Works.

1. A local agency, which has been assigned a cognizant federal agency by the OMB, must submit its ICRP to its cognizant federal agency for approval. A list of the cognizant federal agencies assigned to cities, city departments, counties, and county departments are found in the Federal Register. See Cognizant Federal Agencies link for a list of cognizant federal agencies. The cognizant agency for a department may be different than the cognizant agency for its city or county. It is the local agency's responsibility to ensure that approval for indirect costs at the department level and central service costs at the city or county level is obtained from the appropriate cognizant federal agency. If the assigned cognizant federal agency is the U.S. Department of Transportation (DOT), and FHWA provides the largest amount of federal funds compared to other DOT administrations, the ICRP must be submitted to Caltrans IOAI for approval, under delegation from the FHWA, California Division.
2. For local agencies that have not been designated a cognizant agency in the federal register, the cognizant agency must be the federal awarding agency that provides the predominant amount of direct funding to the local agency. Local agencies that receive the predominant amount of their direct funding from FHWA should submit their proposals to Caltrans IOAI for review and approval under delegation from the FHWA, California Division.
3. Local agencies that have an ICRP and Central Service Cost Allocation Plan (CSCAP) approved by a cognizant federal agency other than FHWA must submit a copy of their approved proposal and plan with subsidiary worksheets and other relevant data, as detailed below, to Caltrans IOAI for review and acceptance.
4. Mail the ICRP and CSCAP to:

   Caltrans Independent Office of Audits and Investigations
   Attn: External Audits, Review of ICRP
   P.O. Box 942874 - MS 2
   Sacramento, CA 94274-0001

Documentation of Proposal

All local agencies desiring to claim their indirect cost for federal-aid and/or state funded projects must prepare an ICRP and CSCAP and provide related documentation to support those costs. All documents related to the ICRP and CSCAP must be retained for audit in accordance with the records retention requirements in 2 CFR Part 200.333. The following shall be included with each ICRP submission as prescribed by 2 CFR Part 200, Appendix VII for fiscal years beginning after December 31, 2014 and by 2 CFR Part 225 for fiscal years beginning before December 31, 2014.

1. Indirect Cost Rate Proposal

a. Rate calculation schedule showing the calculation of rate(s) proposed including subsidiary worksheets and other relevant data, cross-referenced and reconciled to the financial data noted below.

b. Subsidiary worksheets should include the following:

- For final rates and/or carry forward years, a schedule of actual direct/indirect/unallowable costs incurred by cost category type (i.e., rent, utilities, etc. …) as well as by department unit.
- For fixed rates, a schedule of budgeted or estimated direct costs and indirect costs by cost category type and department unit supported by Board approved budget or prior year's actual costs that were used as the basis for the rate(s) submitted.
- Schedule showing calculation of the over/under carry forward provision when fixed rate is used.

c. A copy of the financial data (audited financial statements, comprehensive annual financial report, single audit report, and management letters if applicable, etc.) on which the rate is based.

d. The approximate amount of direct base costs to be incurred under federal-aid reimbursement. These costs should be distinguished between salaries and wages and other direct costs.

e. A chart identifying the organization structure of the agency during the period for which the proposal applies along with a functional statement noting the duties and/or responsibilities of all agency units. After initial submittal, only revisions need to be included with subsequent proposals.

f. Certification that the ICRP was prepared in a manner consistent with the cost principles of 2 CFR Part 200, Subpart E and Appendices V & VII for fiscal years beginning after December 31, 2014 and by 2 CFR Part 225 for fiscal years beginning before December 31, 2014.

Local agencies, which are required to submit their Indirect Cost Rate Proposal to Caltrans for approval, shall submit it in the sample format of Exhibit 5-I: Sample Indirect Cost Rate Proposal which includes documentation outlined in paragraph a, b and f above. In addition, submit the other required documentation (paragraph c, d and e above) which includes documentation outline in paragraph a, b and f above, along with the documentation outlined in paragraphs c, d and e above. Send it to Caltrans IOAI at the address specified above.

2. Central Service Cost Allocation Plan (CSCAP)

If allocated central service costs are included in an ICRP, the local agency should submit its CSCAP along with the ICRP to IOAI. For citywide and countywide cost allocation plans, the local agency should also submit to IOAI a certificate showing approval from the cognizant agency. All CSCAPs should include supporting documentation in accordance with 2 CFR 200, Appendix V, Section E for fiscal years beginning after December 31, 2014 and by 2 CFR Part 225, Appendix C for fiscal years beginning before December 31, 2014. See Assistant Secretary Management and Budget Cost Principles and Agreements with the Federal Government (ASMB C-10), issued by the Department of Health and Human Services) for a Sample CSCAP and supporting documentation.

3. Approval and Use

If the local agency's cognizant federal agency is not FHWA and the cognizant agency has approved the local agency's ICRP and CSCAP for a fiscal year(s), the local agency must send a copy of its federal approval letter to Caltrans IOAI along with its request for review by IOAI. After IOAI has notified the local agency that it has accepted the federal approval letter, the local agency may include indirect costs on its invoices.

If FHWA is a local agency's cognizant agency, at the ICRP and CSCAP levels, then Caltrans IOAI will perform the review and approval. If the ICRP/CSCAP meets submission requirements, IOAI will issue an acceptance letter. The local agency may bill for indirect costs once they receive the acceptance letter.

IOAI will forward a copy of the acceptance letter to the LPA providing the authority to reimburse the local agency for their indirect costs. (Copies of the acceptance letter will also be sent to the local agency's DLAE).

Invoices claiming indirect cost prior to receipt of a written acceptance letter from Caltrans IOAI will be rejected and returned to the local agency unpaid.

Accepted ICAPs for local agencies that have FHWA as their federal cognizant agency will be assessed for risk to determine if an audit will be performed by IOAI. Material adjustments that may result from an audit will require reimbursement from the local agency if previously accepted rates are later found to have included costs that are unallowable as specified by law or regulation or by the terms and conditions of federal or State awards. FHWA may also conduct review/audits.

If federal-aid highway funds or state funds participate in indirect cost reimbursement, all invoices must include a line item for indirect cost, showing the calculation (Direct Cost Base Expense multiplied by the approved indirect cost rate for the fiscal year involved). Local agencies must ensure that the direct cost base used on invoices are the same as the direct cost base used in the accepted/approved ICRP.

Local agencies' indirect costs rates are calculated on an annual basis, so there may be several rates on a project. If the fluctuation causes a depletion of project funding, the local agency will be responsible for making up the difference. Detailed information regarding allowable costs, Cost Allocation Plans and ICRPs are available in 2 CFR Part 200, Subpart E & Appendices V & VII for fiscal years beginning after December 31, 2014, and in 2 CFR Part 225 for fiscal years beginning before December 31, 2014 and ASMB C-10.

These documents are available on the Internet at the 2 CFR Part 200, at: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl, and ASMB C-10 is at: https://rates.psc.gov/fms/dca/asmbc-10.pdf

Additionally, 2 CFR Part 200 provides single audit information for fiscal years beginning after December 31, 2014 and may be accessed on the Internet at: http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go.

For fiscal years beginning before 12/31/14, local agencies should refer to OMB A-133 at: http://www.whitehouse.gov/omb/circulars_default.

5.14 REFERENCES

Federal Office of Management and Budget (OMB) Circular A-133 GAO Government Auditing Standards
https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A133/a133_revised_2007.pdf

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

Title 2 CFR, Part 200, Subpart E (Cost Principles) and Appendices V &VII
http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.5&rgn=div6

Title 2 CFR, Part 225
https://www.gpo.gov/fdsys/granule/CFR-2012-title2-vol1/CFR-2012-title2-vol1-part225/content-detail.html

Title 49 CFR, Section 18.42
https://www.govinfo.gov/content/pkg/CFR-2012-title49-vol1/pdf/CFR-2012-title49-vol1-sec18-42.pdf

Chapter 6 **Environmental Procedures**

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Exhibits

Exhibits applicable to this chapter can be found at:

https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 6-A: Preliminary Environmental Study (PES)
Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES) Form
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Exhibit 6-E: Categorical Exclusion Checklist
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Exhibit 6-J: Preliminary Environmental Screening for Non-Infrastructure Projects PES (NI)
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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 agencies 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 local agency with immediate notification and a copy of the signed CE, FONSI, or ROD, so the local agency 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 (local agency federal-aid transportation projects "off" the State Highway System [SHS]). The local agency 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.

Local agency projects proposed on the SHS are called "locally sponsored" projects. For locally sponsored projects, the local agency 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 Act (the FAST Act, P.L. 114—094). The Fixing America's Surface Transportation (FAST) Act is a five-year legislation to improve the Nation's surface transportation infrastructure, including our roads, bridges, transit systems, and rail transportation network. The 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 a number of changes

to the Efficient Environmental Review Process codified at 23 United States Code Section 139 (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 environmental impact statement (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 environmental assessments (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 environmental impact statement (EIS) or the initiation of an environmental assessment (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 shall rely on a single environmental document prepared under the National Environmental Policy Act (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 shall 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 Record of Decision (ROD)(23U.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, the Federal Highway Administration (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, codified in Title 23 United States Code 326, allows the USDOT Secretary acting through FHWA to assign responsibilities for CE determinations to Caltrans through a MOU (**326** MOU). A copy of the **326** MOU is available at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/23-usc-326-ce-mou-final-signed-5-31-16-a11y.pdf.

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 the Federal Highway Administration 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. A copy of the 327 MOU is available at: https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/files/f0010319-mou.pdf.

The Moving Ahead for Progress in the 21st Century Act (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 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 Certifications Environmental Document Quality Control Reviews 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): https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/files/f0010319-mou.pdf
21. For major projects exceeding $500 million, a draft Project Management Plan (PMP) shall be submitted by the local agency to the DLAE prior to the ROD, FONSI, or CE determination. A final PMP must be submitted within 90 days after the environmental determination which determines the scope of the project. 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. District Local Assistance Engineer (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 local agency project delivery schedule, tracks review of local agency 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 Professionally Qualified Staff (PQS)] for undertakings, when applicable.

1.1.10. Immediately notifies local agency 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 local agency 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 local agency 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 Chapter 17 of the SER 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 and 327 Quarterly Reports to FHWA.

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

1.2. District Senior Environmental Planner (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's 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 and 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 local agencies.

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 Wetlands Only Practicable Alternative Finding (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 local agency-prepared APE maps, indicating approval.

1.3.5. Attends Early Coordination Meetings when requested and provides the local agency 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 and 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 local agencies on required forms and procedures needed to implement 23 U.S.C. 326 and 23 U.S.C. 327.

1.4.6. Provides training to local agencies 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 Certifications (Environmental Document Quality Control Reviews 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 Environmental Compliance Office Chief

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 local agencies 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 (CAP) 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 and 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 local agency designs and constructs

5.3. Performs all government-to-government consultation with Indian Tribes as defined in 36 CFR Part 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 local agency'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.

https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol33/pdf/CFR-2015-title40-vol33-sec1508-18.pdf.

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] found at https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol33/pdf/CFR-2015-title40-vol33-sec1500-1.pdf).

Local agencies 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." https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol33/pdf/CFR-2015-title40-vol33-sec1500-1.pdf.

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 (https://www.gpo.gov/fdsys/pkg/CFR-2015-title23-vol1/pdf/CFR-2015-title23-vol1-sec771-101.pdf).

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 (https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol33/pdf/CFR-2015-title40-vol33-sec1508-27.pdf).

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 (for example, 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 local agencies 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 a significant environmental impacts (https://www.gpo.gov/fdsys/pkg/CFR-2013-title40-vol34/pdf/CFR-2013-title40-vol34-sec1508-4.pdf). 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.

https://www.gpo.gov/fdsys/pkg/CFR-2015-title23-vol1/pdf/CFR-2015-title23-vol1-sec771-117.pdf.

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 into Exhibit 6-E: Categorical Exclusion Checklist (SER Forms Website).

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/-/media/dot-media/programs/environmental-analysis/documents/327-mou-201612-final-a11y.pdf.

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 local agency 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 shall determine if the EA should be processed as a complex EA.

The local agency 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. Local agencies 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 local agency 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 Certifications (Environmental Document Quality Control Review Certification) form before submitting their Draft and Final EAs to Caltrans for review and approval. The form is provided at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/external-qc-certification.docx or 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 Certifications (Environmental Document Quality Control Review 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 local agency prior to circulation. When district environmental staff determines that deficiencies exist, the DLAE notifies the local agency.

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 local agency 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 local agency 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. Local agencies 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 local agency 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 local agency 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 local agency 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 local agency 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 local agency 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 local agency 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 local agency 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: http://www.dot.ca.gov/ser/forms.htm.

The local agency is responsible for performing a quality control review of their EIS and supporting technical studies and completing the External Certifications (Environmental Document Quality Control Review 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 local agency of environmental document status and approval.

Upon submitting a "Request for Authorization" for new phases of work, the local agency 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. Local agencies 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, result in a *de minimis* impact on that property, no further Section 4(f) evaluation is required. Local agencies 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.

- **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 Part 800 for California's federal-aid highway program. Guidance for compliance with the provisions of 36 CFR Part 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** – EO 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 Executive Order 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, or3) 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, local agencies 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," shall 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, Volume 1; 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 local agency confirms the project is in the FTSIP; 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 local agency, 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 local agency 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.

- Local agency 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, local agency 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 local agency.
- District SEP (or designee) logs transmittal date in LP2000 and tracks Caltrans and resource and regulatory agency review time and various other milestones.
- Local agency 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, Exhibit 1.1 at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/f0002091-106pa-14-a11y.pdf.

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 local agency, DLAE, and district SEP (or designee) shall 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

The Federal Highway Administration 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. Local agencies 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, local agencies 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. Section 6.5 "Categorical Exclusions," in this chapter describes 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 local agency 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 local agency serves as the CEQA lead for the project and is solely responsible for compliance with CEQA. In cases where the local agency 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 local agency 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 local agency 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 local agency 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 local agency should begin "required technical studies" as soon as possible after the PES form is fully signed.

Note: The local agency shall 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 local agency 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 local agency is assuming the risk that elements of work may not be fully reimbursable. The local agency 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 the LP2000.

Mitigation Commitments and Plans, Specifications, and Estimate

The local agency 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 data base.

The local agency 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 local agency is responsible for ensuring that all required mitigation is included in the construction contract. The local agency 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 local agency 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 local agency 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 local agency, 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 shall 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/-/media/dot-media/programs/environmental-analysis/documents/ser/nepa-ceqa-revalidation-form.docx.

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 local agency.

Training

The DLAE and district training coordinator are responsible for notifying the local agency 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/other-important-issues/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 the local assistance data base (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 local agency and its consultant must be based on information contained in the complete and fully signed PES form. Furthermore, the local agency should reference the 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 shall be consistent with guidance set forth in the SER, and the processing of technical reports shall be in accordance with procedures set forth in LAPM Chapter 6: Environmental Procedures.

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 consistent with the DLA July 20, 2007,

Memo, Subject: Tracking Local Assistance NEPA Compliance Milestones, to ensure that information provided in the report is accurate and complete.

Record Retention

The District Local Assistance environmental office shall 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: Instruction for Completing the Preliminary Environmental Screening for Non-Infrastructure Project (PES {NI}) Form.

It is important that the local agency 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 local agencies shall 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 local agency shall not commence with Authorization to Proceed until after the PES(NI) Form has been fully signed by all signatories.

1. Local agency (LA) confirms project is programmed in federally approved FTIP/FSTIP.
2. Local agency confirms project will not involve right of way (R/W) acquisition or the physical construction of any facilities.
3. Local agency is ready to request federal Authorization to Proceed for the project.
4. Local agency 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. Local agency provides additional information on PES (NI) Continuation Sheet for all "TBD" responses.
6. Local agency 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 local agency 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 local agency 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: Instruction for Completing the Preliminary Environmental Screening for Non-Infrastructure Project (PES {NI}) Form, 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 local agency carefully follow and complete each step to avoid unexpected project costs or delays in project development and to ensure a "complete and sufficient" submittal. Local agency(ies) shall 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. Local agency (LA) develops complete project description and project maps.
2. LA reviews relevant literature, maps and inventories.
3. LA requests technical information from resource and regulatory agencies.
4. LA verifies research findings in the field (site visit).
5. LA 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 LA 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).
6. LA 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 local agency and if necessary, schedules a meeting or field review to assist the local agency with completion of the PES form. NOTE: Field reviews are required for local agency 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 Exhibit 6-E: Categorical Exclusion Checklist (SER Forms) and Exhibit 6-F: Categorical Exemption/Categorical Exclusion Determination Form (CE/CE). For 23 U.S.C. §326 CEs, the district SEP (or designee) makes the project–level air quality conformity determination) following guidance provided in Chapter 38 of the SER. by completing the Transportation Air Quality Conformity Findings Checklist: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/conformity-checklist.docx.

    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 as referenced in the LP2000 instructions Tracking Local Assistance NEPA Compliance Milestones.

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 LA, and informs the LA that compliance with NEPA is complete.
17. LA 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 LA or documents telephone conversation or meeting with LA (if applicable), outlining:
    - All technical studies/reports required.
    - A SER link for each of the technical studies.
    - The LA's responsibility for ensuring that all required technical reports are prepared according to the guidance set forth in the SER.
    - The LA'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 LA'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 LA'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 LA'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 in accordance with instructions on the DLA July 20, 2007 Memo, Subject: Tracking Local Assistance NEPA Compliance Milestone memo.

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 LA may need to budget more money for NEPA compliance?
- Is the LA'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 LA, 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 shall be provided to the DLAE.

21. LA 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.

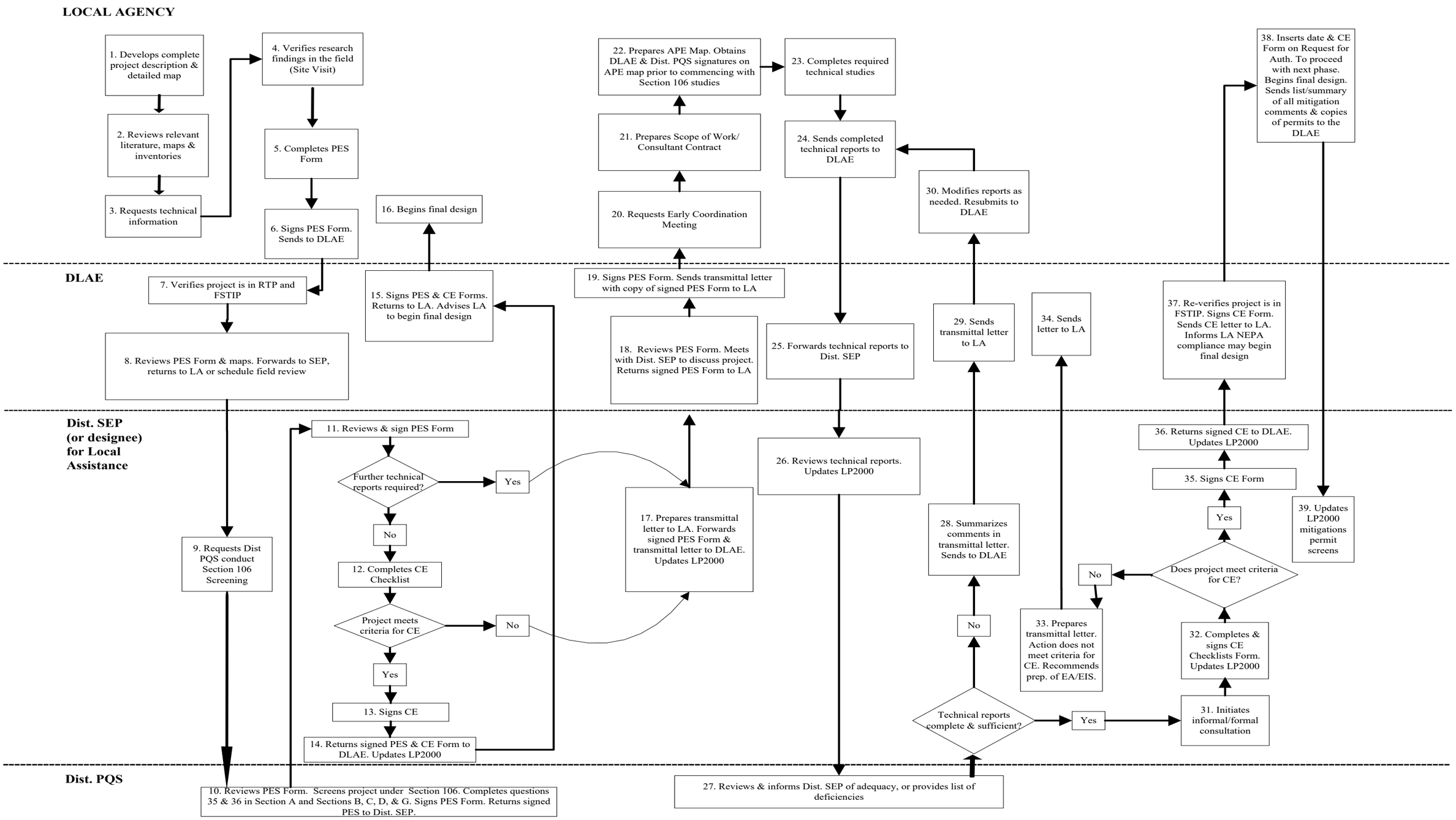

Figure 6-1: PES Form and Categorical Exclusion (CE) Process Flowchart

LA 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. LA 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. LA/Consultant completes required technical studies according to the guidance in SER.

    Note: The LA 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. LA 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 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On Environmental Studies – Environmental Study Milestones Screen, (1) enter the date each study/technical report was received by the DLAE, (2) enter the date each study/technical report was received by the district SEP (or designee), (3) using the agency drop-down arrow, select Caltrans as the agency, and indicate the date that each technical report is sent to the district technical specialist for review.
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 LA'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 LA 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 LA.

30. LA 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 according to the instructions provided in the July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On Environmental Studies – Environmental Studies Milestones Screen, (1) using the "Agency" drop-down arrow, select the agency that the particular technical study/report was sent to for action, and (2) indicate the "Date Sent to Agency" (Note: This will be the date on the district SEP's action request correspondence to the agency). When the same document will be sent to multiple agencies (i.e. BA to USFWS and NMFS), list Study Type (BA) twice in the Study Type column and then under Agency, select USFWS for one and NMFS for the second.

32. When other agency action is complete, the district SEP (or designee) updates LP2000 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On the Environmental Studies-Environmental Studies Milestone Screen, (1) locate the entry for the agency that the particular technical report was sent to for actions, (2) enter the date of agency letter documenting their final opinion, concurrence, agreement, etc., (3) use the Delay drop-down arrow to indicate "Yes" or "No." Enter "Yes" if USFWS or NMFS exceeded 135 days in issuing a Biological Opinion; if USFWS or NMFS exceeded 30 days in issuing a Concurrence Letter; if the SHPO exceeds 30 days in issuing concurrence on the HPSR or Finding of Effect (FOE) (if PA requires SHPO review); or if excessive delays occurred during any other agency review, (4) use the comments field to document number of iterations needed between Caltrans and LA to produce a complete and sufficient report or number of iterations needed between Caltrans and resource and regulatory agency to produce an acceptable report.

    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 LA 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 LA to the DLAE and updates LP2000 accordingly.
34. District SEP (or designee) sends the letter, email, or documentation of telephone conversation to the LA.
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 LA that:
    - NEPA compliance is complete.
    - LA may commence with final design.
    - LA is responsible for incorporating all minimization, avoidance and mitigation measures, and the conditions of all permits agreements and approvals into final design.
    - LA 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 shall be sent to the DLAE prior to advertisement for construction.
    - LA 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, as follows: On Project Environmental Process Milestones screen (1) enter date the CE is received in the district, or date a CE is prepared by Caltrans, and use comments field to capture external/internal delays associated with the development of the NEPA determination, (2) enter the dates district SEP and DLAE sign the CE form, and use comments fields to note any delays and if changes in project scope from what was described in PES form.
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 LA informing them that the NEPA process is complete.

38. LA 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). LA begins final design. Prior to advertisement for construction, LA sends the DLAE a copy of all permits (that is, Coastal, 401, 404, 1602 Series, Sec 10, State or Federal Encroachment or Right of Entry) and documentation that the LA has fulfilled all mitigation commitments.
39. Upon receipt of list of mitigation commitments and permits, the district SEP (or designee) updates LP2000 Environmental-Permits Screen and Mitigation Commitments Screens according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones.

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 LA 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. LA receives signed PES form recommending an EA as the NEPA Class of Action.
2. LA 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. LA identifies alternatives and measures which might mitigate adverse environmental impacts.
4. LA (or consultant) completes technical studies and prepares technical reports and Administrative Draft EA according to appropriate Caltrans Annotated Outline, provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates. LA (or consultant) completes the Environmental Document Review Checklist (ED Checklist), provided at:

   https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates, cross-referencing items on the checklist with the corresponding page numbers found in the Draft EA.
5. LA performs Quality Control Review of all technical reports and Draft EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment

(October 2012) provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates, and completes and signs the "External Certifications - Environmental Document Quality Control Reviews" (External QC Reviews) form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates prior to submitting the Draft EA and technical studies to DLAE.

6. LA 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 LA 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 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones.
9. District SEP (or designee) initiates the 3 step Quality Control Review process found in Chapter 38 of the SER .
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 Certifications - Environmental Document Quality Control Reviews"(Internal QC Reviews) 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 Certifications (Environmental Document Quality Control Reviews) 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 local agencies 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, Executive Order 11990-Protection of Wetlands, Executive Order 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, that the document is technically accurate and consistent with the SER, the annotated outlines and other applicable guidance. The SEP review shall 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 shall 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 (MOU 3.2.9).

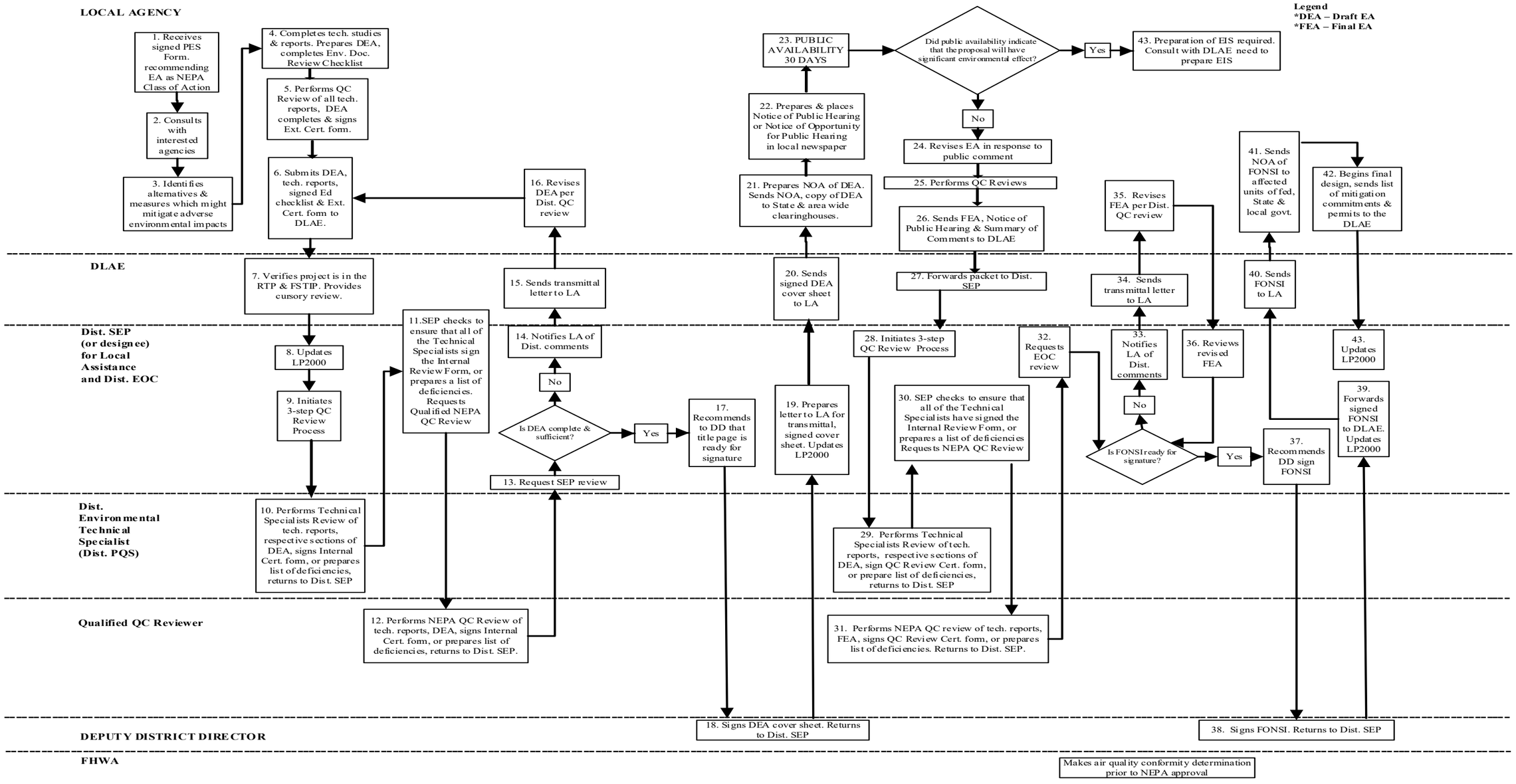

Figure 6-2: Routine Environmental Assessment (EA) Process Flowchart

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 LA, or documents meeting (if applicable) with LA, summarizing all comments received from district technical specialists.
15. District DLAE (or designee) sends transmittal letter or email outlining any deficiencies to the LA; files copy of the letter, email or documented meeting with LA in the project file, and provides the SEP with a copy.
16. LA 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 LA or documents meeting with LA (if applicable) confirming availability of the signed Draft EA cover sheet.
20. District DLAE (or designee) sends transmittal letter or email to the LA and files copy of the letter, email or documentation of meeting, if applicable, with the LA regarding availability of the signed Draft EA in the project file. District SEP (or designee) completes appropriate fields in LP2000 as follows: On Environmental – Environmental Assessment (EA) screen, under Public Circulation field, enter date DD or designee signed cover of Draft EA.
21. LA 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. LA 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 Impacts Statement, and discuss the need to prepare and EIS with the DLAE and district SEP STEP #43.

24. LA 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 LA completes the Environmental Document Review Checklist, provided at: http://www.dot.ca.gov/ser/forms.htm, 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. LA performs Quality Control review of the Final EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment (October 2012) provided at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/memo-naqualctrl-a11y.pdf and completes and signs the External Certifications Environmental Document Quality Control Reviews form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

26. LA 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 http://www.dot.ca.gov/ser/forms.htm#conformity 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 LA 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 as follows: On Environmental Studies – Environmental Study Milestones screen (1) enter the date of resource or regulatory agency letter, documenting their final opinion/concurrence/agreement, and so forth, (2) use the Delay drop-down arrow to indicate "Yes" or "No." Note: "Yes" should be used if USFWS or NMFS exceeded 135 days in issuing a Biological Opinion; if USFWS or NMFS exceeded 30 days in issuing a

Concurrence Letter; if there are delays in signatures on project MOA or project PA under Section 106 (if applicable), or if excessive delays occurred during any other agency review, (3) use the comments field to document number of iterations needed (between Caltrans and LA) to produce a complete and sufficient report or number of iterations needed (between Caltrans and resource and regulatory agency) to produce an acceptable report.

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. Per the October 1, 2012 memo, Environmental Document Quality Control Program under NEPA Assignment, this policy memorandum describes procedures that Caltrans would implement for environmental documents to ensure compliance with NEPA and other federal laws.

    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 Certifications Environmental Document Quality Control Reviews 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 LA, or documents meeting with LA, 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 LA; files the letter, email or documents meeting with the LA (if applicable) in the project file, and provides the SEP with a copy.

35. LA 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 according to the instructions provided in July 20, 2007 DLA

memo, Subject: Tracking Local Assistance NEPA Compliance Milestones: On Environmental – Environmental Assessments (EA) screen (1) enter the date District (DLAE or Environmental) receives LA-prepared Final EA and (2) enter date DD or designee signature appears on the FONSI.

40. DLAE sends signed Final EA cover sheet and FONSI to the LA and notifies LA that they may begin final design.
41. LA 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. LA 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 Environmental-PERMITS Screen and Mitigation Commitments Screen in LP2000 according to the instruction provided in July 20, 2007, DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones http://localassistance.onramp.dot.ca.gov/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 the following link: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/fhwa-sol-form.docx.

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 LA 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 LA to discuss why the project is not a CE and to advise the LA 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. LA receives the signed PES form recommending a complex EA as the NEPA Class of Action.
2. LA 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. LA identifies alternatives and measures to minimize the potential for adverse environmental impacts.
4. LA completes technical studies and reports, prepares the Administrative Draft EA according to the appropriate Caltrans Annotated Outline, provided at: http://www.dot.ca.gov/ser/forms.htm. LA completes the Environmental Document Review Checklist, provided at http://www.dot.ca.gov/ser/forms.htm cross-referencing items on the checklist with the corresponding page numbers found in the Administrative Draft EA.
5. LA performs Quality Control Review of all technical reports and Administrative Draft EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment (October 2012) and completes and signs External Certification (Environmental Document Quality Control Reviews) form prior to submitting the Draft EA and technical studies to DLAE. External Certification (Environmental Document Quality Control Reviews) form is provided at: http://www.dot.ca.gov/ser/forms.htm
6. LA signs Administrative Draft EA title page and submits the following completed and original signed documents to the DLAE:
    - Environmental Document Review Checklist
    - External Certifications (Environmental Document Quality Control Review 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 Certifications (Environmental Document Quality Control Reviews) 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 as follows: On the Environmental Assessments (EA) Screen (1) enter the date the DLAE received the LA prepared Draft EA, (2) use comments field to indicate whether a Joint NEPA/CEQA document was prepared, and if not, why, (3) indicate whether the LA submitted a "completed" Environmental Document Quality Control Reviews form with the Administrative Draft EA, by using the drop down arrow to select "Yes" or "No" (next to LA Quality Assurance/Quality Control).
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 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 (October 2012).
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 Certifications (Environmental Document Quality Control Reviews) 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 Certifications (Environmental Document Quality Control Reviews) 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 Certifications (Environmental Document Quality Control Reviews) 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.

A list of qualified Local Assistance NEPA Assignment Quality Control Reviewers is provided at: https://localassistance.onramp.dot.ca.gov/office-nepa-assignment-and-environmental-compliance.

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 local agencies 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 Certifications (Environmental Document Quality Control Reviews) 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 (October 2012) 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 LA, or documents telephone conversation or meeting with the LA (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 LA and files a copy of the letter, email, or documented meeting (if applicable) with the LA in the project file, and provides a copy to the SEP.
16. LA 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 LA completed Environmental Document Review Checklist
    - One copy of LA completed and signed External QC Reviews form
    - One copy of completed and signed Internal QC Reviews 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 LA outlining HQ EC quality assurance comments and requesting the LA make the necessary revisions to the Administrative Draft EA.
20. LA 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 LA 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 QC Reviews 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 QC Reviews 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 LA, or contacts the LA 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. LA 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. LA 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. LA prepares Administrative Final EA according to appropriate Caltrans Annotated Outline, provided at: http://www.dot.ca.gov/ser/forms.htm, and LA completes the Environmental Document Review Checklist, provided at: http://www.dot.ca.gov/ser/forms.htm 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 Certifications (Environmental Document Quality Control Review Certification) form provided at: http://www.dot.ca.gov/ser/forms.htm.

32. LA drafts FONSI recommendation.
33. LA sends the Administrative Final EA, Notice of Public Hearing, Summary of Comments received, and original signed External Certifications (Environmental Document Quality Control Review Certification) form to the DLAE.

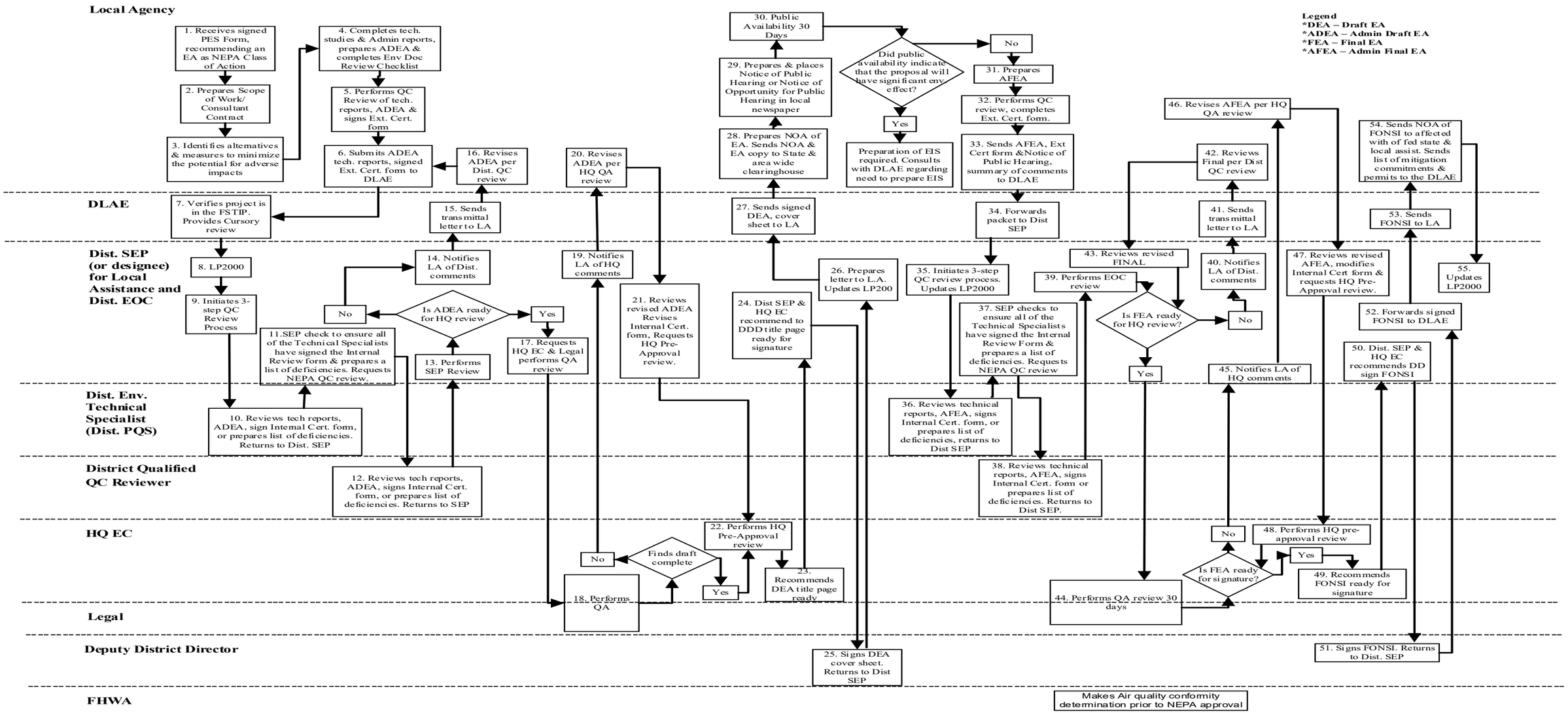

Figure 6-3: Complex Environmental Assessment (EA) Process Flowchart

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 (October 2012).

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 Certifications (Environmental Document Quality Control Reviews) form.

    The last district environmental technical specialist to review the Draft EA forwards the signed Internal Certifications (Environmental Document Quality Control Reviews) form or list of deficiencies (if applicable) to the district SEP (or designee).

37. District SEP (or designee) checks to ensures that all of the Resource/Technical Specialists have signed the Internal Certifications (Environmental Document Quality Control Reviews) 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.

    A list of qualified Local Assistance NEPA Assignment Quality Control Reviewers is provided at: https://localassistance.onramp.dot.ca.gov/office-nepa-assignment-and-environmental-compliance.

    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 local agencies 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 Certifications (Environmental Document Quality Control Reviews) 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 (October 2012) 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 LA, or notifies the LA via email, or meeting regarding deficiencies in the Administrative Final EA.
41. District DLAE (or designee) sends transmittal letter or email to the LA and files a copy of the letter, email, or documented telephone conversation or meeting (if applicable) with the LA in the project file, and provides a copy to the SEP.
42. LA 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 LA 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 LA completed Environmental Document Review Checklist
- One copy of LA completed and signed External QC Reviews form
- One copy of completed and signed Internal QC Reviews 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.

    The 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 LA of deficiencies.
46. LA 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 Certifications (Environmental Document Quality Control Review 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 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On the Environmental Assessments (EA) Screen, next to Final EA, (1) use Comments Field to document number of iterations needed to produce an acceptable Final EA, document delays at LA, document delays at Caltrans, indicate sufficiency/deficiency of quality/completeness of Local Agency's Quality Assurance/ Quality Control Environmental Document Quality Control Review Certification form, (2) next to Final Quality Assurance/Quality Control (Complex EA) enter date of final signature (Chief, Environmental Branch) on Environmental Document Quality Control Review Certification form, (3) use Comments field to document delays/concerns associated with internal reviews, (4) next to FONSI, enter date DD or designee signature appears on FONSI, (5) use comments field to document internal and external delays associated with the FONSI.
53. DLAE sends signed FONSI to the LA and notifies them that they may begin final design.
54. LA 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 according to the instruction provided in July 20, 2007, DLA Memo, Subject: Tracking Local Assistance NEPA Compliance Milestones.
56. 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.
    http://www.dot.ca.gov/ser/vol1/sec4/ch31ea/chap31ea.htm#statuteoflimitations

    An example of SOL notice can be found at the following link:
    http://www.dot.ca.gov/ser/forms.htm

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. LA receives signed PES Form recommending EIS.

2. LA 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. LA 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. LA also drafts NOI (http://www.dot.ca.gov/ser/forms.htm). 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. This link provides additional guidance: http://www.dot.ca.gov/ser/guidance.htm#fastact).
4. LA 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. LA 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. LA undertakes technical studies and prepares technical reports (as required) according to the guidance set forth in the SER.
11. LA prepares Administrative Draft EIS consistent with Caltrans Annotated Outline in the SER provided at: http://www.dot.ca.gov/ser/forms.htm
12. LA completes the Environmental Document Review Checklist, provided at: http://www.dot.ca.gov/ser/forms.htm
13. LA performs Quality Control Review of all technical reports and Administrative Draft EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment (October 2012) and completes and signs the External QC Reviews form provided at: http://www.dot.ca.gov/ser/forms.htm
14. LA 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 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On EIS Screen, (1) enter the date the NOI is published in the FR, use comments field to indicate date Caltrans sent the NOI to FHWA for publication in the FR, (2) enter date Administrative Draft EIS received by the district (either the DLAE or Environmental); use comments field to indicate whether a Joint CEQA/NEPA document was prepared, and if not, why not; (3) next to LA Quality Control/Quality Assurance, indicate whether LA submitted a "completed" External Certifications (Environmental Document Quality Control Review Certification) form with the Administrative Draft EIS, by selecting "Yes" or "No."
17. District SEP initiates and coordinates the Quality Control Review process according to Caltrans Environmental Document Quality Control Program under NEPA Assignment (October 2012). Note: The Local agency 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 (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf

    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 QC Review form provided at: http://www.dot.ca.gov/ser/forms.htm, 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 (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf

    The District SEP (or designee) checks to ensure all of the Technical Specialists have signed the Internal Certifications (Environmental Document Quality Control Reviews) 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 (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf

    The NEPA QC Reviewer signs the Internal Certifications (Environmental Document Quality Control Reviews) form provided at: http://www.dot.ca.gov/ser/forms.htm 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 local agencies 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 (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf

    SEP signs the Internal Certifications (Environmental Document Quality Control Reviews) form provided at: http://www.dot.ca.gov/ser/forms.htm or (if applicable) prepares list of deficiencies (if applicable).

    The SEP review ensures that NEPA QC 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. The SEP review shall 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 shall 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 LA, or contacts the LA 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 LA, provides a copy to the DLAE, and updates appropriate fields in LP2000.

25. The LA 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 shall 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 LA completed Environmental Document Review Checklist
- One copy of LA completed and signed External Quality Control Certification Sheet
- One copy of completed and signed Internal Quality Control Certification Sheet

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 LA completed Environmental Document Review Checklist
- One copy of the completed and signed Internal Certification form
- One copy of the LA completed and signed External 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 (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf.

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.

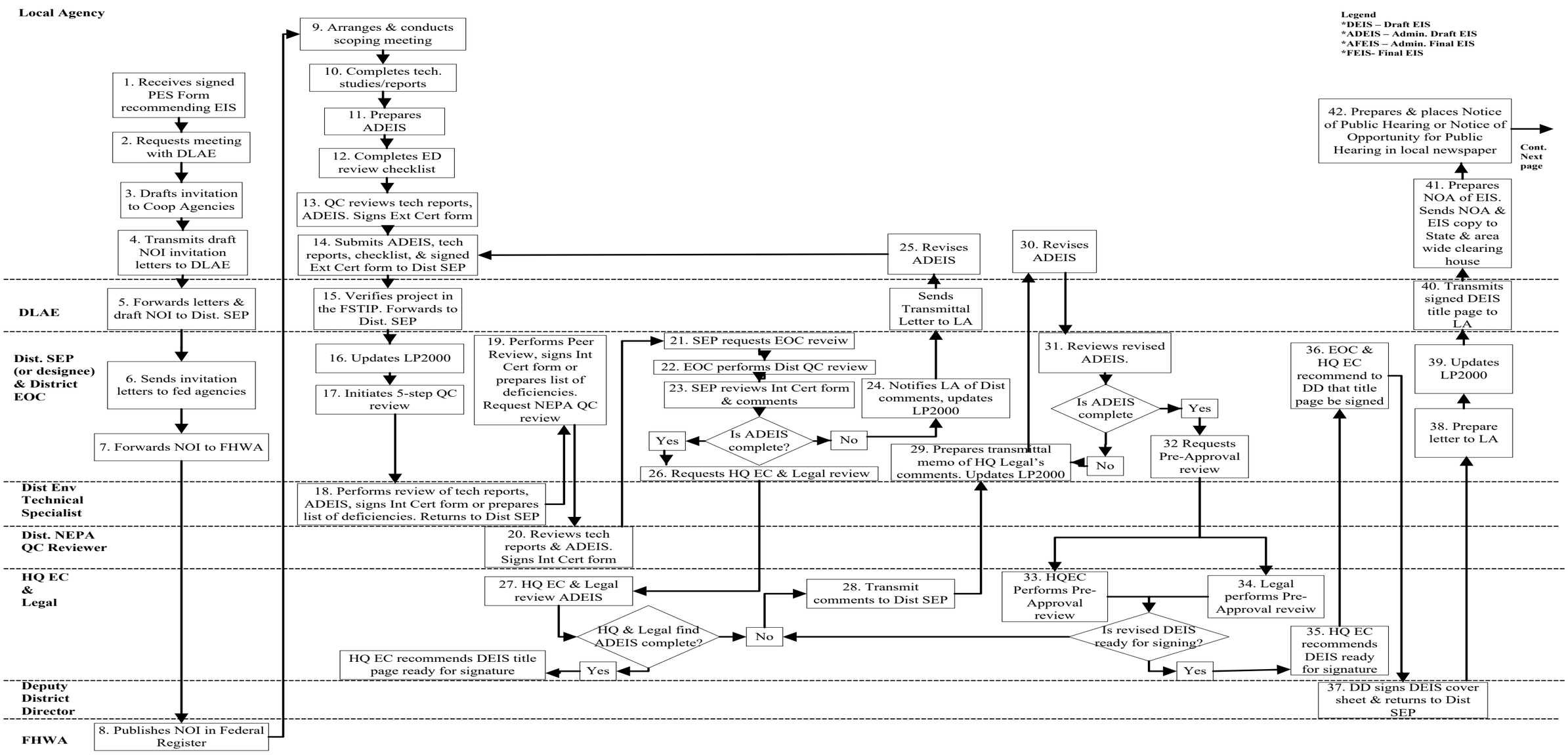

Figure 6-4: Environmental Impact Statement (EIS) Process Flowchart

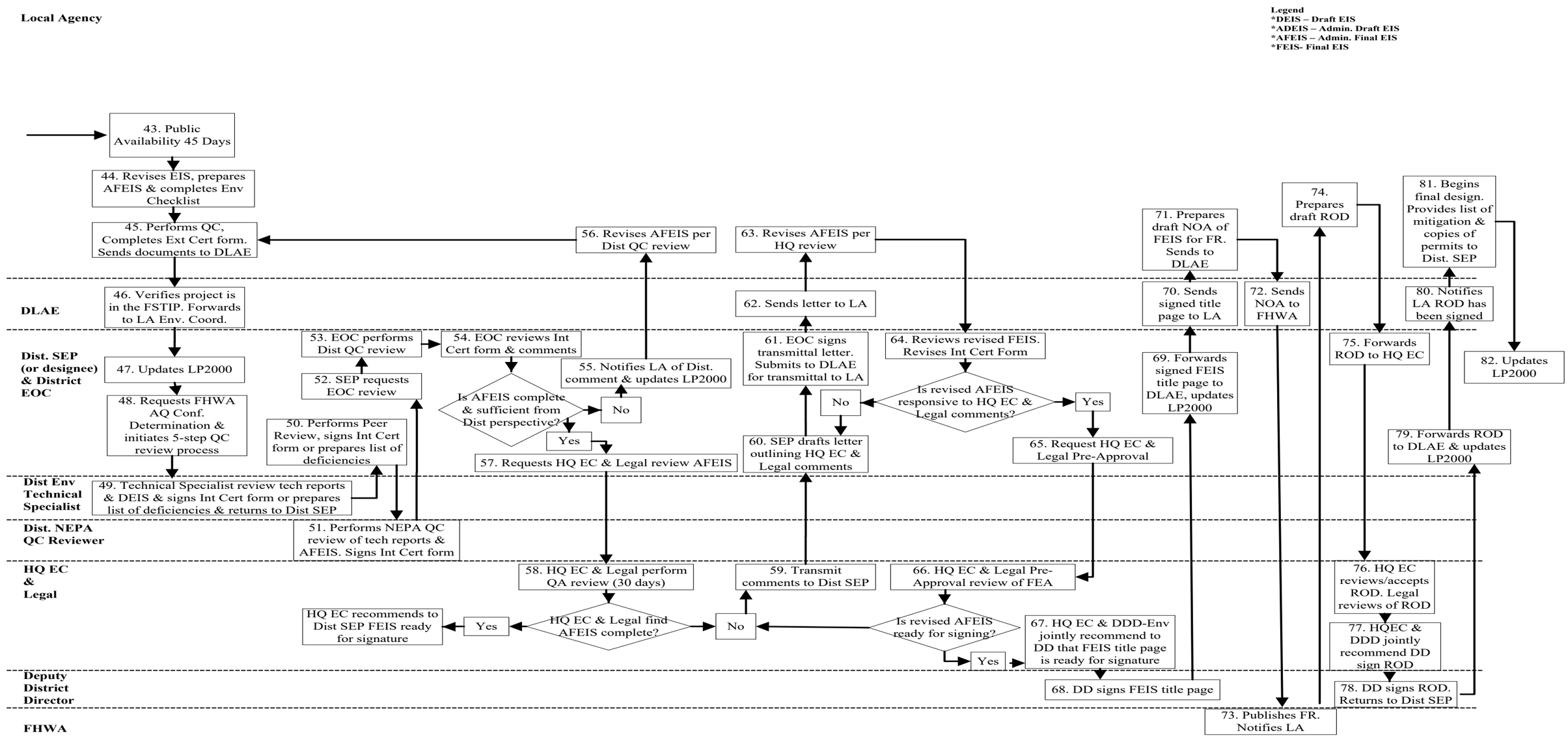

Figure 6-4: Environmental Impact Statement (EIS) Process Flowchart- continued

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 LA, or contacts the LA via telephone, to inform them of HQ EC and HQ Legal's comments, and requests LA 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 shall be provided to the LA. District and HQ EC staff should assist the LA 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. LA 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 Certifications (Environmental Document Quality Control Reviews) 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 Certifications (Environmental Document Quality Control Reviews) 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 QC Reviews 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: 10businessdays 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 LA transmitting the signed Draft EIS title page and informing the LA that they may begin public circulation.

39. District SEP updates LP2000 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones.

40. District DLAE (or designee) transmits the letter or email, with signed Draft EIS title page, to the LA 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 LA 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. LA 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. LA responds to public comments, revises the EIS (as needed), prepares the Administrative Final EIS consistent with Caltrans Annotated Outline in the SER at: http://www.dot.ca.gov/ser/forms.htm, and completes the Environmental Document Review Checklist, provided at http://www.dot.ca.gov/ser/forms.htm

45. LA performs Quality Control review of all technical reports and Administrative Final EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf

    LA completes and signs the External QC Reviews form provided at: http://www.dot.ca.gov/ser/forms.htm

    LA 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 Certifications (Environmental Document Quality Control Reviews) 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 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On EIS Screen, next to Public Hearing, enter date Public Hearing is conducted (if applicable).

Use comments field to document whether there is a substantial controversy over the project and the nature of the controversy.

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 (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf. 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 Chapter 38 of the SER.

    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 (October 2012), and sign the Internal Certifications (Environmental Document Quality Control Reviews) 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 (October 2012), and signs the Internal Certifications (Environmental Document Quality Control Reviews), 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 (October 2012) and signs the Internal Certifications (Environmental Document Quality Control Reviews) 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 (October 2012), and signs the Internal Certifications (Environmental Document Quality Control Reviews) 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 Certifications (Environmental Document Quality Control Reviews) 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 LA 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. LA 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 shall 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 LA completed Environmental Document Review Checklist (for Final)
    - One copy of LA completed and signed External QC Quality Reviews form
    - One copy of completed and signed Internal QC Reviews 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 LA completed Environmental Document Review Checklist
    - One copy of the completed and signed Internal QC Reviews form
    - One copy of the LA completed and signed External QC Reviews 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 (October 2012) provided at: http://www.dot.ca.gov/ser/downloads/memos/nepa/map21/memo_naqualctrl.pdf

HQ EC signs the Internal QC Reviews form provided at: http://www.dot.ca.gov/ser/forms.htm 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 shall 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 LA make the necessary revisions to the Administrative Final EIS.

    Note: The district staff and HQ EC should assist LA 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 LA; provides a copy to the DLAE includes a copy in the project file, and updates appropriate fields in LP2000.

63. LA 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 Certifications (Environmental Document Quality Control Reviews) 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 shall 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 Quality Review Certification sheet (Final)

    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 Certifications (Environmental Document Quality Control Reviews) 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 according to the instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On the EIS Screen, next to Final EIS, (1) enter date stamp received by either the DLAE or district SEP (or designee); (2) use comments field to identify preferred alternative, document number of iterations needed to produce an acceptable Final EIS; document delays at LA; document delays at Caltrans; indicate sufficiency/deficiency of quality/completeness of the External Certifications (Environmental Document Quality Control Reviews) form. Next to Final HQ Quality Control/Quality Assurance, (1) enter date of final signature (EOC) on the internal Certifications (Environmental Document Quality Control Reviews) form, (2) use comments field to document any delays/concerns. Next to Final Legal Sufficiency, (1) enter date of Legal letter of sufficiency, and (2) use comments field to document delays/concerns associated with Legal review of Final EIS. Next to Public Circulation of Final EIS, (1) enter date DD or designee signed cover of Final EIS. (2) Use comments field to document date request sent to the FHWA to publish Final EIS in FR, actual date of publication in FR, the beginning and ending date of public availability/comment (not less than 45 days), any internal/external delays/concerns, and whether there is continuing substantial controversy over the project.
70. DLAE sends the signed Final EIS title page to the LA.
71. LA 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 LA publishes the NOA in local newspaper.
74. LA 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 shall 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 according to the instructions

provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones. On the EIS Screen, next to Approval of ROD, enter date DD signature appears on the ROD.

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.

The comments field should be used to document internal and external delays associated with bringing about the ROD.

80. DLAE notifies the LA that ROD has been signed and that they may begin final design.
81. LA 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)
82. District SEP updates Environmental-PERMITS Screen and Mitigation-Commitments Screen in LP2000 according to the instruction provided in July 20, 2007, DLA Memo, Subject: Tracking Local Assistance NEPA Compliance Milestones http://localassistance.onramp.dot.ca.gov/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. http://www.dot.ca.gov/ser/vol1/sec4/ch31ea/chap31ea.htm#statuteoflimitations
    An example of SOL notice can be found at the following link: http://www.dot.ca.gov/ser/forms.htm

6.11 References

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

Council of Environmental Quality (CEQ), 40 CFR Part 1500, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," November 29, 1978 https://www.fedcenter.gov/Bookmarks/index.cfm?id=786

US. DOT Order 5610.1C, September 18, 1979, Considering Environmental Impacts by Agencies within the U.S. DOT https://cms.dot.gov/sites/dot.gov/files/docs/DOT%20Order%205610.1D%20Procedures%20for%20Considering%20Environmental%20Impacts_0.pdf

23 CFR 771, Environmental Impact and Related Procedures (April 1, 1994) https://www.gpo.gov/fdsys/granule/CFR-2016-title23-vol1/CFR-2016-title23-vol1-part771

Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Office, 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 http://www.dot.ca.gov/ser/vol2/106pa_14.pdf

Air Resources Laws and Regulations
http://www.arb.ca.gov/html/lawsregs.htm

CE Checklist
http://www.dot.ca.gov/ser/forms.htm

CE-CE form
http://www.dot.ca.gov/ser/forms.htm

External Certifications Environmental Quality Control Reviews
http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/External_QC_Certification.doc

Internal Certifications Environmental Document Quality Control Reviews
http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc

Chapter 7 **Field Review**

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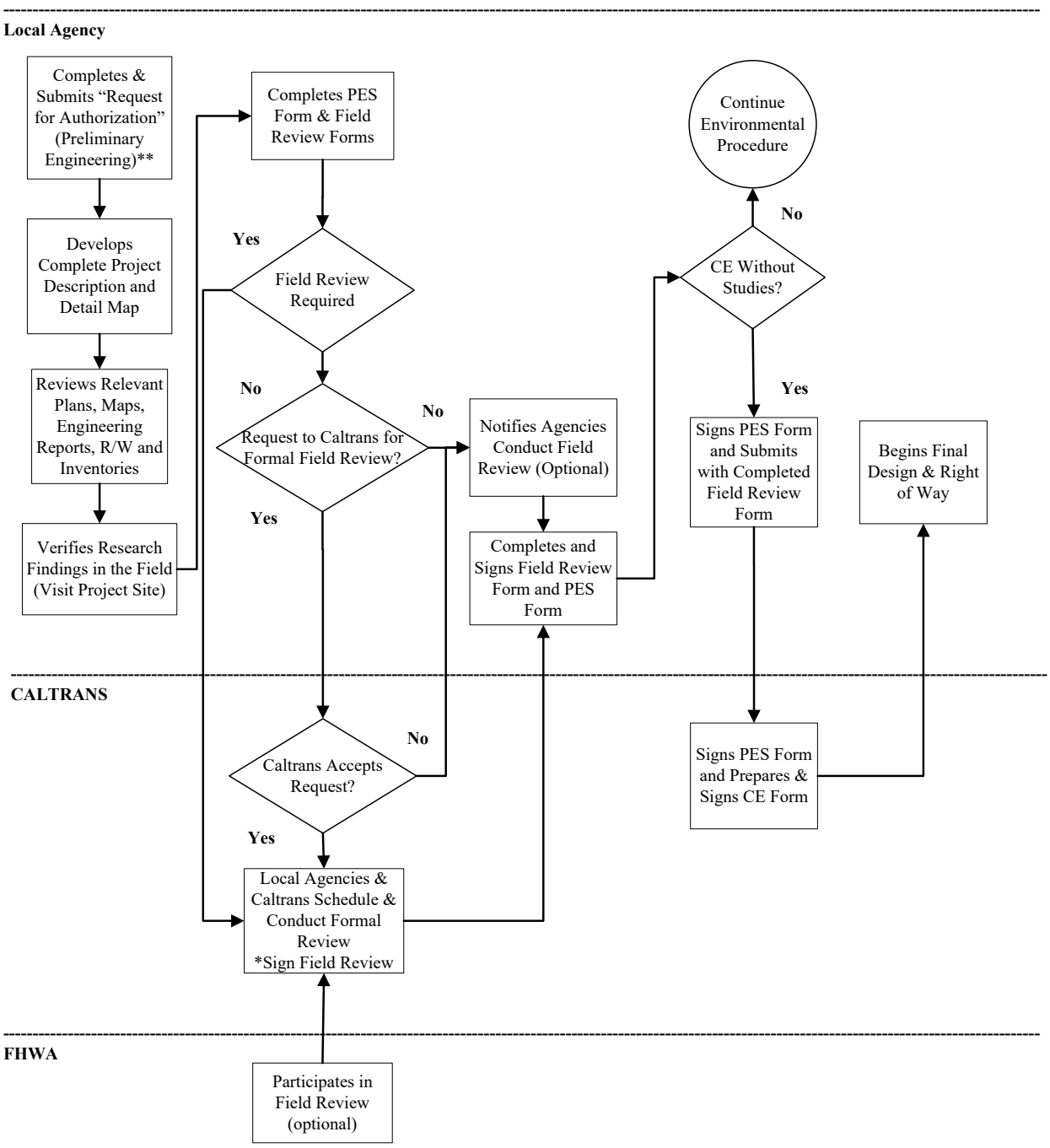
FIGURES

Figure 7-1: Field Review Procedures for Developing Local Federal-Aid Projects ii



***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.

Each agency 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 local agency transportation projects off the State Highway System (SHS) serves the same purpose as the Project Study Report 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 local agency 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 a local agency 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 agency, Caltrans, other regional and local agencies, 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 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 each federal-aid project on the National Highway System (NHS) with an estimated total cost of $50 million or more and bridge projects on the NHS with an estimated total cost of $40 million or more. For more information on this subject, please see LAPM Chapter 12: Plans, Specifications & Estimate, Section 12.5: Value Engineering Analysis.

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 (Delegated or Projects of Division Interest), 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 of the Field Review 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 to be significant if:

- The total cost is over $10 million, or
- It involves an unusual structure (see definitions in 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 local agency, 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 seismic safety retrofit projects, a field review is mandatory as described in the Local Assistance Program Guidelines (LAPG), Section 6.8: Mandatory Field Reviews for Local Seismic Safety Retrofit Projects.

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's approval before the local agency 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). 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 local agency 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 local agency on scheduling. The DLAE notifies Caltrans and FHWA attendees. The local agency 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 (DLA) representative, Caltrans attendees, when applicable, should include an environmental reviewer, a right of way reviewer, and a representative from the Office of Structure Design (if a structure is involved). In order to optimize their value to the local agencies, 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.

A representative from FHWA should be consulted for all Projects of Division Interest projects. Request for FHWA consultation should be coordinated through the DLAE (see LAPM Chapter 2: Roles and Responsibilities and LAPM Chapter 6: Environmental Procedures for further details).

Optional Field Reviews

For projects that Caltrans has determined a field review is not required, the local agency 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, an agency should consider the following factors: functional classification, project type and Delegated/Projects of Division Interest status, project complexity, total cost, interested, and affected parties and type of funds.

If a local agency 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 local agency staff
- Complexity of project, type of structures
- Funding program
- Right of way and design issues

For railroad crossing projects, the PUC 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 agency 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 local agency 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 agency 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 local agency shall prepare and complete Exhibit 7-B: Field Review Form (or DAF for ER projects) 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. For Highway Bridge Program (HBP) funded (Bridge) projects, the field review documents, including major structure data sheets, must be completed prior to any request for authorization. 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. Similar early discussions should occur for HBP funded (Bridge) projects to ensure funding eligibility.

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 local agency shall 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 the FHWA, DLA, and Office of Structure Design 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 local agency, 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 local agency as a supplement to the Field Review Form and may require FHWA concurrence.

Optional Field Reviews Not Attended by Caltrans or the FHWA

If the field review is optional and Caltrans and the FHWA will not be attending, the local agency may complete Exhibit 7-B: Field Review Form 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 5 on Exhibit 7-B and LAPM 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 Preliminary Environmental Study (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) Form is designed to identify:

- The scope of the project
- The existing condition of the project area
- The potential existence of sensitive environment 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 right of way or relocate utilities can significantly affect project development, especially costs and scheduling. Activity within Caltrans right of way requires coordination and an encroachment permit. Federal laws and regulations must be followed if there is FHWA participation in any project phase, whether in 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 US Code 4801, et. seq.). Item 7 of Exhibit 7-B: Field Review Form highlights the possible right of way 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 7 of Exhibit 7-B provides for an overview by phase and anticipated federal participation. Item 8 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 Policy).

Project Administration

The agency submitting the request is normally responsible for administering all phases of the project. If another arrangement is expected, this should be noted. If the agency plans to hire a consultant to assist with any phase, this should be noted. This allows the agency 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 local agency prepares the final Exhibit 7-B: Field Review Form and attachments. If a field review is required for NHS projects, all appropriate forms and attachments shall 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 brackets ([ ]) notation under Item 12 of Exhibit 7-B: Field Review Form for additional attachments.

The local agency consults with the district regarding the number of copies to be sent. The district forwards Exhibit 7-B: Field Review Form (two if a bridge is involved) with the required attachments to the Division of Local Assistance. The local agency 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 form (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

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 8-A: Sample Notice of Public Hearing
Exhibit 8-B: Sample Notice of Opportunity for Public Hearing

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 and minimize 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 greatly 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 (discussed later). 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 hearing can contribute to a better understanding of the project features, provide for a more direct response to specific individual questions and 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. 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 agency in deciding which type is most appropriate for its project.

8.2 Necessity for a Public Hearing

Federal Regulations

The agency shall 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 shall 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 V1 compliance documentation, open forum versus formal hearing, coordination with DED 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, 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 Local Assistance Program Guidelines (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 shall 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 shall be held.

8.4 Public Notification

Public notices are published as a means 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
- 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

In all cases where non-English speaking people are affected by the proposal, the local agency determines if the language barrier is of such magnitude as to warrant special publicity in the language of those affected. Particular effort is to be made to seek out and invite minority leaders and representatives of low mobility groups. In lieu of sending the representatives of low mobility groups the notice, a letter containing the pertinent data can be sent.

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 of 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 shall 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 local agency will be available for inspection and copying at the local agency'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 local agency shall 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 shall 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 shall 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 shall 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 shall 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 10 days after the hearing with the procedure for submissions

On projects of particular local interest or great complexity, the local agency may wish to consider the use of bulk-rate type circulars in addition to the published notices. In addition, the local agency may use other forms of communication such as electronic mail and websites.

The local agency shall 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 shall 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 shall explain the procedure and specify the deadline for requesting a public hearing. The deadline for requesting a public hearing shall 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 local agency shall 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 local agency shall cooperate with State and other local agencies to the fullest extent possible 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 a local agency 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

Federal regulation 40 CFR 1502.6(c)(2) states that if a Draft EIS is to be considered at a public hearing, the agency shall 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 (DD) 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 local agency or of a cooperating agency, the local agency arranges to have suitable personnel available to respond to questions which may arise. The local agency is responsible for successful completion of all hearing requirements.

A presiding officer shall be identified for the hearing. If the hearing covers controversial issues, the agency should consider selecting a neutral person, who has no interest in the project, to act as presiding officer.

At each public hearing, it shall 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 local agency 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 local agency'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 shall 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 shall 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 shall 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 as long as the conditions surrounding the original hearing remain constant.

Federal regulations (40 CFR 1502.9 (c)) require that the local agency prepares supplements to either 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 local agency is responsible for reassessing changes in project location and design features and changes in the surrounding area and shall 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 SHS.

Chapter 9 **Civil Rights & Disadvantaged Business Enterprise**

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Exhibits

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 9-A: DBE Implementation Agreement for Local Agencies
Exhibit 9-B: Local Agency DBE Annual Submittal Form
Exhibit 9-C: Local Agency ADA Annual Certification Form
Exhibit 9-D: DBE Contract Goal Methodology
Exhibit 9-E: Sample Evaluation of Good Faith Efforts

Chapter 9 **Civil Rights & Disadvantaged Business Enterprise**

9.1 Introduction

As subrecipients of United States Department of Transportation (USDOT) funding, local agencies 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 (USC) and Code of Federal Regulations (CFR).

Caltrans Division of Local Assistance (DLA) is responsible for developing policies and procedures to help local agencies 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.

9.2 Title VI of the Civil Rights Act of 1964 and Related Statutes

Title VI of the Civil Rights Act of 1964 prohibits discrimination based upon race, color, and national origin. Specifically, 42 USC 2000d states, "No 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."

In addition to Title VI of the Civil Rights Act of 1964, other nondiscrimination statutes afford legal protection under the Federal Highway Administration's (FHWA) Title VI Program. These statutes include the following:

- Section 162(a) of the Federal-Aid Highway Act of 1973 (23 USC 324) (sex)
- Age Discrimination Act of 1975 (age)
- Section 504 of the Rehabilitation Act of 1973 (disability)
- Americans with Disabilities Act of 1990 (disability)

Two Presidential Executive Orders place further emphasis on the Title VI protections of race and national origin and are included in the scope of the FHWA's Title VI Program:

1. Executive Order 12898**, "**Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs federal agencies to develop strategies to address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. The order is also intended to promote nondiscrimination in federal programs substantially affecting human health and the environment, and to provide minority and low-income communities access to public information and an opportunity for public participation in matters relating to human health or the environment.
2. Executive Order 13166, **"**Improving Access To Services For Persons with Limited English Proficiency," directs federal agencies to evaluate services provided and

implement a system that ensures that Limited English Proficiency (LEP) persons are able to meaningfully access the services provided, consistent with, and without unduly burdening, the fundamental mission of the local agency. Additionally, each federal agency shall ensure that recipients of federal financial assistance provide meaningful access to programs, services, and information to their LEP applicants and beneficiaries free of charge.

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, 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).

Title VI Nondiscrimination Statement

The local agency shall develop a Title VI policy statement for signature by the head of the agency. The statement shall give reasonable guarantee that the programs administered by the agency are conducted in compliance with all Title VI nondiscrimination requirements. The signed statement shall be disseminated to the public via such methods as posting in public areas or on the agency's website (49 CFR 21.7(b)).

Assurances

Local agencies sign assurances as part Exhibit 4-C: Master Agreement with Caltrans. The Program Supplement Agreement (PSA) (see Exhibit 4-D: Sample – Program Supplement Agreement) for each project includes the local agency's reaffirmation of the nondiscrimination assurances contained in the Master Agreement.

Designation of a Title VI Coordinator

The local agency shall 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 shall be disseminated to the public via such methods as posting in public areas or on the agency's website (23 CFR 200.9(b)(1)).

Title VI Complaint Procedures

A local agency that receives federal financial assistance is required to adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination on basis of race, color, national origin, age, sex, or disability.

A Title VI complaint may be filed by any individual, group of individuals, or entity that believes they have been subjected to discrimination or retaliation based on their race, color, national origin, age, sex, or disability. The complaint must be filed no later than 180 calendar days from the most recent date of the alleged act of discrimination unless the time for filing is extended. Complainants have the option to submit their complaint in any format (i.e., use of a complaint form, letter, etc.), but all complaints must be submitted in writing and signed by the complainant or their representative. Local agencies shall offer assistive services for LEP individuals or individuals with disabilities to accommodate alternative formats.

Complaints must include the complainant's name, address, and phone number and be detailed to specify all issues and circumstances of the alleged discrimination. Complainants also have the right to file complaints with federal agencies that provide federal financial assistance to Caltrans or to seek private counsel.

Local agencies shall maintain a record of all Title VI complaints received that includes the date received; identification of each complainant by race, color, sex, or national origin; the nature of the complaint; the disposition (if applicable); the date of the disposition (if applicable); and other pertinent information.

Whenever possible, local agencies shall attempt to resolve Title VI complaints at the lowest possible level. Local agencies shall forward copies of all Title VI complaints to the respective Caltrans Equal Employment Opportunity Office in their District for review and disposition (23 CFR 200.9(b)(3)).

Data Collection

The local agency shall develop procedures for the collection of statistical data (race, color, national origin, age, sex, and disability) of participants in, and beneficiaries of, federally funded roadway projects, e.g., citizens impacted by relocation and participants attend the public hearing during an environmental review. In addition, the local agency shall 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 (23 CFR 200.9(b)(4)).

Title VI Training

The local agency shall provide Title VI training for its managers, supervisors, and staff with frequent public contact every two years (23 CFR 200.9(b)(9)).

Limited English Proficiency

The local agency is required to ensure programs and activities normally provided in English are accessible to LEP persons. Each local agency shall perform an annual assessment to determine if modifications are needed to their programs and activities to ensure meaningful access by LEP persons, culminating in the development of a language access plan. The local agency's assessment, sometimes referred to as a "four-factor" analysis, shall be based on the following factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered.
2. The frequency of LEP contacts.
3. The nature and importance of the programs, services, or activities provided.
4. The resources available for LEP persons.

For example, publications or public notices shall be made available in languages understood by the affected population. Interpreters shall be made available for LEP persons and for the hearing impaired (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.

Dissemination of Title VI Information

The local agency shall develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English, pursuant to 23 CFR 200.9(b)(12). The purpose of the information shall be to communicate information about the public's rights under Title VI. Sample information includes, but is not limited to, posters, brochures, flyers, "frequently asked questions" documents, web pages, and the like. Alternative formats shall be offered and made available at no cost to the requester, where applicable.

Contracts and Agreements

The local agency shall include the provisions indicated in Appendix A of Exhibit B, included as part of Exhibit 4-C: Master Agreement - Administering Agency-State Agreement for Federal-Aid Projects of the Local Assistance Procedures Manual in contracts and agreements, between the local agency and the contractor, where applicable.

Environmental

Presidential Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," is considered during the preliminary environmental investigation process and completion of the Preliminary Environmental Study (PES) Form. See Exhibit 6-A: Preliminary Environmental Study (PES), Instructions for Completing Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES), LAPM Chapter 6: Environmental Procedures, or refer to the Local Assistance Environmental website.

If a project requires that a Relocation Impact Study and/or Community Impact Assessment be conducted, the local agency shall follow the guidance set forth in the Standard Environmental Reference (SER). The SER is an online electronic reference that sets forth document content and format, as required by law or regulation, and recommended format, if not specified by law or regulation. Chapter 25 of the SER addresses Environmental Justice and LEP requirements.

Public Hearings and Public Involvement 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 shall 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 and the Caltrans Right of Way Manual, unless the local agency has adopted its own Caltrans-approved procedures. These manuals require 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 the FHWA Form 1273 that is physically inserted in the federal-aid construction contract (see LAPM Chapter 12: Plans, Specifications, and Estimate).

Title VI Monitoring

The local agency shall 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 with frequent public contact to address Title VI questions and provide technical assistance and training. Policies and procedures should be evaluated periodically for Title VI compliance and incorporate Title VI requirements, where applicable. Demographic data should be collected and analyzed an on ongoing basis to better understand the populations being served by the local agency, as well as inform the delivery of services. Public meeting notices and other communications should be reviewed for LEP purposes as a matter of practice.

Local agency preliminary environmental studies, technical reports, environmental assessments, and Environmental Impact Statements provide for data collection and analysis on the demographics of neighborhoods and communities. Caltrans' DLAEs and Environmental Specialists review the environmental documents to ensure that no disproportionate adverse impacts occur on minority and low-income neighborhoods or communities.

Title VI Compliance Reviews

Caltrans' DLA conducts program reviews of subrecipients of federal financial assistance to ensure compliance with Title VI requirements pursuant to 23 CFR 200.9(b)(7). Reviews can occur at any time, and at Caltrans' discretion. Reviews consist of a desk audit and/or on-site visit. Reviewers summarize observations and findings in a formal compliance review report that is provided to the local agency and the FHWA. Corrective action may be required, where applicable.

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 local agency submits Exhibit 12-D to the DLAE along with the request for authorization to proceed with construction for federal-aid construction contracts.

Local Agency 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 local agency 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 local agency Resident Engineer. The purpose of this checklist is to assist the local agencies 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. The local agency submits Exhibit 15-B along with the Award Package shortly after award of the construction contract (see LAPM Chapter 15).

Additional Resources for Title VI Implementation

You may access additional information on implementing Title VI (including potential Title VI issues, self-monitoring, good practices, and mitigation measures) in Caltrans' Title VI Program Plan and Caltrans' Title VI Guidelines here.

In addition, Caltrans has produced a Title VI brochure that is available in ten different languages at the same website.

9.3 Accessibility: Rehabilitation Act of 1973/Americans with Disabilities Act of 1990

As part of FHWA's regulatory requirements under Title II of the ADA Section 504 of the Rehabilitation Act of 1973 (504), Caltrans ensures that subrecipients of federal and state funds do not discriminate on the basis of disability in any highway transportation program, activity, service or benefit they provide to the general public. The subrecipients must ensure that people with disabilities have equitable opportunities to use the public rights-of-way system.

Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC Subsection 791 et seq.) requires that any entity receiving federal financial assistance must ensure that persons with disabilities are not discriminated against in any and all aspects of employment, or denied access to the goods or services that these federal fund recipients provide.

The intent of the Americans with Disabilities Act of 1990 (Public Law 101-336, codified as 42 USC 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.

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, shall be accessible to and usable by persons with disabilities.

American with Disabilities Act (ADA) Assurances

Administering agencies sign ADA assurances as part of their Exhibit 4-C: Master Agreement with Caltrans. The Program Supplement Agreement (PSA), (see Exhibit 4-D:Sample -Program Supplement Agreement for each project, includes the administering agency's reaffirmation of the nondiscrimination assurances contained in the Master Agreement.

Designation of an ADA Liaison Officer

A local agency that employs 50 or more persons is required to designate an ADA Liaison Officer who is responsible for coordinating the efforts of the local agency to comply with ADA requirements, including investigation of complaints. The local agency shall make available to the public the name and contact information (mailing address, telephone number, e-mail address, etc.) of its designated ADA Liaison Officer 28 CFR 35.107(a).

Adoption of Grievance Procedures

A local agency that employs 50 or more persons is required to adopt and publish procedures for resolving grievances arising under Title II of the ADA (28 CFR 35.107(b)). 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 a local agency for good cause.

Grievance procedures set out a system for resolving complaints of disability discrimination in a prompt and fair manner. The grievance procedure shall include:

- A description of how and where a complaint under Title II of the ADA may be filed with the local agency.
- A statement notifying potential complainants that alternative means of filing a complaint, other than in writing, will be made available to individuals with disabilities.
- A description of the time frames and processes to be followed by the complainant and the local agency.
- Information on how to appeal an adverse decision.
- A statement of how long complaint files will be retained.

ADA Nondiscrimination Policy

All public entities must provide information to the public, program participants, program beneficiaries, applicants and employees about the ADA and how it applies to the public entity.

Here are some methods that public entities have used:

- Put the notice on the public entity's website.
- Include the notice in social media such as Twitter and Facebook.
- Post the notice at facilities.
- Publish the notice in local newspapers.

- Broadcast the notice in public service announcements on local radio and television stations.
- Include the notice in program announcements and applications.

The information must be provided in "alternative" formats so that it is accessible to people with hearing and vision disabilities. Examples of alternative formats:

- Captioned public service announcements on television
- Large print (recommend: san-serif typeface such as Helvetica or Arial, 18 point size. If an individual requests a specific point size, provide notice in that size)
- Braille
- Text file on a thumb disk or emailed to the person
- HTML format on an accessible website
- Audio recording
- Radio announcement

Public entities must provide the information not just once, but on an ongoing basis. For example when there's a new ADA Coordinator the ADA Nondiscrimination Policy should be updated.

Self-Evaluation

The local agency is required to complete a self-evaluation of its current programs, policies, and practices to identify barriers for people with disabilities pursuant to 28 CFR 35.105, 49 CFR 27.11(c)(2), and Section 504 of the Rehabilitation Act of 1973. The scope of the self-evaluation includes both architectural and administrative barriers. The local agency shall provide an opportunity for interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

Critical areas to evaluate as part of a self-evaluation shall 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.

All public entities are required to complete a self-evaluation. However, only those that employ 50 or more persons are required to maintain the self-evaluation on file and make it available for public inspection for at least three years pursuant to 28 CFR 35.105(c). Other public entities are not required to retain their self-evaluations but are encouraged to do so because these documents evidence of a public entity's good faith efforts to comply with ADA requirements.

NOTE: Local agencies shall implement a system for periodically reviewing and updating self-evaluations and, if applicable, transition plans 49 CFR 27.11(c)(2)(v). As a best practice, an updated self-evaluation is recommended every three (3) years prior to updating the agency's Transportation Improvement Program.

Transition Plan

Following completion of a self-evaluation, a local agency with 50 or more employees is required to develop a transition plan to prioritize removal of structural barriers for accessibility purposes pursuant to 28 CFR 35.150(d). Although public entities 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 shall accomplish the following, but are not limited to:

- Identify physical obstacles in the public agency'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.
- Indicate the official responsible for implementation of the plan.

NOTE: Local agencies shall implement a system for periodically reviewing and updating self-evaluations and, if applicable, transition plans 49 CFR 27.11(c)(2)(v). As a best practice an updated transition plan is recommended every three (3) to five (5) years following adoption of the updated self-evaluation.

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 shall be made accessible to persons with disabilities in accordance with federal and state accessibility standards on all local agency federal-aid projects. Facility maintenance does not constitute an alteration (see LAPM Chapter 11: Design Guidance for what constitutes an alteration triggering accessibility requirements).

Certification

Local agencies certify compliance with federal, state, and local ADA regulations, laws, and codes in the Exhibit 12-D: PS&E Checklist.

ADA Monitoring

Local Agency ADA Annual Certification Form

Each local agency 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:

1. Designated ADA Liaison Officer information (name, address, phone number, and e-mail address).
2. Certification that the local agency has an updated self-evaluation and transition plan, if applicable. If the local agency does not have an updated self-evaluation and transition plan, then the local agency provides an estimated date that they will have one, and may be subject to a desk or on-site program review.
3. Certification of the adoption of a grievance procedure. If the local agency does not have a grievance procedure, then the local agency provides an estimated date that they will have one.

Field Reviews

During the field review, an agreement is reached among all interested parties (local agency, 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).

Plans, Specifications & Estimate

Local agencies 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).

Final Inspection

The local agency 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: Deficiencies and Sanctions.

9.4 Equal Employment Opportunity (EEO) Contractor Compliance

The current Federal Transportation Act, 23 USC 140(a), and implementing regulations of 23 CFR 230 require that the local agency 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 local agency is also required to include notification of a federal-aid contractor's EEO responsibilities in the advertised contract specifications. The local agency shall 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.

Federal regulation 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.

EEO Implementation

Assurances

Local agencies 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

Local agencies shall physically insert the Form FHWA 1273 into the contract document. Local agencies 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 subcontractors 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 local agency'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 16.12: Equal Employment Opportunity).

EEO Monitoring

The three checklists listed in Section 9.2: Nondiscrimination Title VI of the Civil Rights Act of 1964 and Related Statutes serve to assist local agencies in implementing EEO and are monitoring tools for DLAEs to ensure that EEO requirements are met. In addition, DLA performs periodic EEO process reviews that include reviews of the DLAE, local agency, and contractor.

Caltrans OBEO includes local agency contracts in their compliance reviews of federal-aid contractors.

EEO Reporting

During the last full pay period in July, the prime contractor must complete Exhibit 16-O: Federal-Aid Highway Construction Contractor's Annual EEO Report (FHWA 1391 Form) for all federal-aid construction contracts that are active.

NOTE: The person who should be signing Exhibit 16-O would either be the Local Agency 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)

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 local agencies 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.

DBE Definitions

Calendar Days - Unless stated otherwise, days in this chapter is understood to mean calendar days which includes weekends and holidays.

Disadvantaged Business Enterprise (DBE) - A for-profit small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens (or lawfully admitted permanent residents) of the United States and (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged by the Small Business Administration (See 49 CFR 26).

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 Title 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. In order to ascertain whether the statewide overall DBE goal is achieved, Caltrans will track DBE participation on all federal-aid contracts.

Sub-recipient - In this section sub-recipient refers to the Local Agency receiving federal funds.

DBE Program Responsibilities

FHWA Responsibilities

The FHWA administers the payment of federal-aid highway funds to recipients: states, counties, cities, and other agencies for transportation-related projects. The 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

The Office of Business and Economic Opportunity (OBEO)

- 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 local agency compliance with DBE program requirements by conducting process reviews. The FHWA and the District are invited to participate in these process reviews.
- Assemble statewide local agency DBE commitment, final utilization, and other information for reports to OBEO.
- Provide training for District and local agency staff.

District Local Assistance Engineer (DLAE)

- Monitor local agency compliance with DBE program requirements by participating in process reviews.
- Ensure that local agencies with federal-aid contracts submit an Exhibit 9-A: DBE Implementation Agreement for Local Agencies form.
- Review and approve the Exhibit 9-B: Local Agency DBE Annual Submittal Form for local agencies that award federal-aid contracts during the Federal Fiscal Year (FFY).

- Serve as the focal point for advice and assistance to the local agencies on DBE matters.
- Ensure that Exhibit 10-O2: Consultant Contract DBE Commitment (Construction Contracts) 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.
- Provide DBE oversight of local agencies 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 local agency for the DLAE's approval.
- Maintain a file with an index of all local agency's Exhibit 9-A: DBE Implementation Agreement for Local Agencies and Exhibit 9-B: Local Agency DBE Annual Submittal Form Information from these forms is entered into LP2000.

Local Agency Responsibilities

Local agency responsibilities are detailed in Section 9.6: Local Agency Responsibilities Under Caltrans DBE Program Plan of this chapter, and the responsibilities include:

- Submit the Exhibit 9-A and amendments to the DLAE.
- Designate a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the Caltrans DBE Program as it pertains to local agencies.
- 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 Agency Responsibilities under Caltrans DBE Program Plan

Local agency recipients of federal financial assistance shall comply with all the elements of Title 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. Local agency responsibilities are detailed in the Caltrans DBE Program Plan. A copy of this plan is available from the DLA DBE website at: https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/disadvantaged-business-enterprise.

As an initial step, each local agency shall submit Exhibit 9-A form to formally acknowledge the local agency's commitment to implement the Caltrans DBE program, and to comply with all the prescribed responsibilities detailed in the LAPM.

Each local agency shall also submit the Exhibit 9-B: Local Agency DBE Annual Submittal Form. This annual form provides information for the upcoming Federal Fiscal Year (FFY), which will include:

1. Identification of the DBE Liaison Officer
2. Plan of race-neutral measures to implement for the forthcoming FFY
3. Prompt payment provisions to be used in contracts
4. Monitoring and enforcement mechanisms to ensure that subcontractors are promptly paid

DBE Implementation Agreement for Local Agencies

Exhibit 9-A: DBE Implementation Agreement for Local Agencies form must be completed and submitted to the DLAE for execution by each agency before a request for authorization is processed. This agreement will need to be signed by a representative who is authorized by the governing body to take such action.

Some of the elements of the Agreement are highlighted below.

Objective/Policy Statement

Each agreement contains a policy statement expressing a commitment to the Caltrans DBE Program, stating its objectives, and outlining responsibilities for its implementation. Each local agency will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its federal-aid contracts.

Local Agency DBE Annual Submittal Form

Each local agency must provide the DLAE with a completed Exhibit 9-B, 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 local agency's Exhibit 9-A.
3. The local agency'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 local agency has in place to ensure that all subcontractors, including DBEs, are promptly paid.

Overall Statewide DBE Goal

The overall statewide DBE goal is obtained through race-conscious and race-neutral components. The overall statewide goal is shown on the DLA DBE website at: https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/disadvantaged-business-enterprise.

Race-Neutral Component

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. Local agencies must establish contract goals on each federal-aid contract where there are subcontractable opportunities for DBEs.

DBE Liaison Officer

Each local agency must designate a Disadvantaged Business Enterprise Liaison Officer (DBELO) who shall have direct independent access to the local agency's Chief Executive Officer concerning DBE program matters. This person shall 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 local agency completes its Exhibit 9-B: Local Agency DBE Annual Submittal Form.

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 shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted 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 Progress Payment to Subcontractors

Attention is directed to Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code which require a prime contractor or subcontractor to pay any subcontractor not later than seven (7) days of receipt of each progress payment, unless otherwise agreed to in writing.

These requirements apply to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

Federal Regulation (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 local agency may decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
2. The local agency 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 thirty (30) days after the subcontractor's work is satisfactorily completed.
3. The local agency 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 for

satisfactory completion of the accepted work within thirty (30) days of local agency payment to the contractor.

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, the local agencies choose one of the above three methods to ensure prompt pay. The local agency's choice will be reported to Caltrans when it completes Exhibit 9-B: Local Agency DBE Annual Submittal Form.

9.7 DBE Participation on the Contract

Participation Opportunities

The local agency should structure its contracts and cost estimates by task to provide opportunities for DBE participation. Participation by DBEs is possible during the Preliminary Engineering, Environmental, Final Design, Right of Way, and Construction phases of the project, and includes work as lead consultants, prime contractors, sub-consultants, subcontractors, suppliers, vendors and truckers.

DBE Contract Goals

All federal-aid contracts that have subcontracting opportunities must have a DBE goal set. This includes, but is not limited to: construction, consultant services such as project specific Architectural & Engineering (A&E), and master on-call A&E contracts. 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 local agency 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, Nonprofit 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

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 local agency 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 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 Exhibit 9-D

All federal-aid contracts must have an Exhibit 9-D: DBE Contract Goal Methodology submitted to the DLAE. The following are responsibilities and a flowchart for local agencies, DLAEs, and HQ DLA.

Local Agency Responsibilities

- Local agencies must submit an Exhibit 9-D, DBE Contract Goal Methodology in Microsoft Excel format to their DLAE for all federal-aid contracts, including master on-call A&E contracts, prior to advertisement and/or with the request for authorization (RFA) package as applicable.
- Local agencies may not advertise the contract before receiving DLAE feedback on the DBE goals and notification from the DLAE that the authorization to proceed (E-76) has been issued.
  - For construction contract estimates greater than $2 million and consultant contract estimates greater than $500,000, the DBE goal will need to be reviewed and approved by Caltrans. Local agencies will have an opportunity to discuss and resolve any differences in the respective goal calculations; however, the final decision rests with Caltrans.

DLAE Responsibilities

- For construction contract estimates greater than $2 million and consultant contract estimates greater than $500,000, e-mail the Exhibit 9-D, DBE Contract Goal Methodology in Microsoft Excel format to HQ DLA: DBEgoal.GFE@dot.ca.gov.
  - Once the Exhibit 9-D, DBE Contract Goal Methodology has been reviewed by the Office of Business & Economic Opportunity (OBEO), send a confirmation e-mail to the local agency with the recommended DBE contract goal.
- For construction contract estimates less than or equal to $2 million and consultant contract estimates less than or equal to $500,000, conduct a cursory review of the Exhibit 9-D and send an email to the local agency to confirm the DBE contract goal.

DLA Responsibilities

The following applies to DBE goal setting for construction contract estimates greater than $2 million or consultant contract estimates greater than $500,000:

- Send confirmation to the DLAE that Exhibit 9-D is being processed.
- After processing, reply to the DLAE with the recommended DBE contract goal.
- If the agency 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 the District. If there is no response from DLA after 15 days, the DLAE has the discretion to move forward

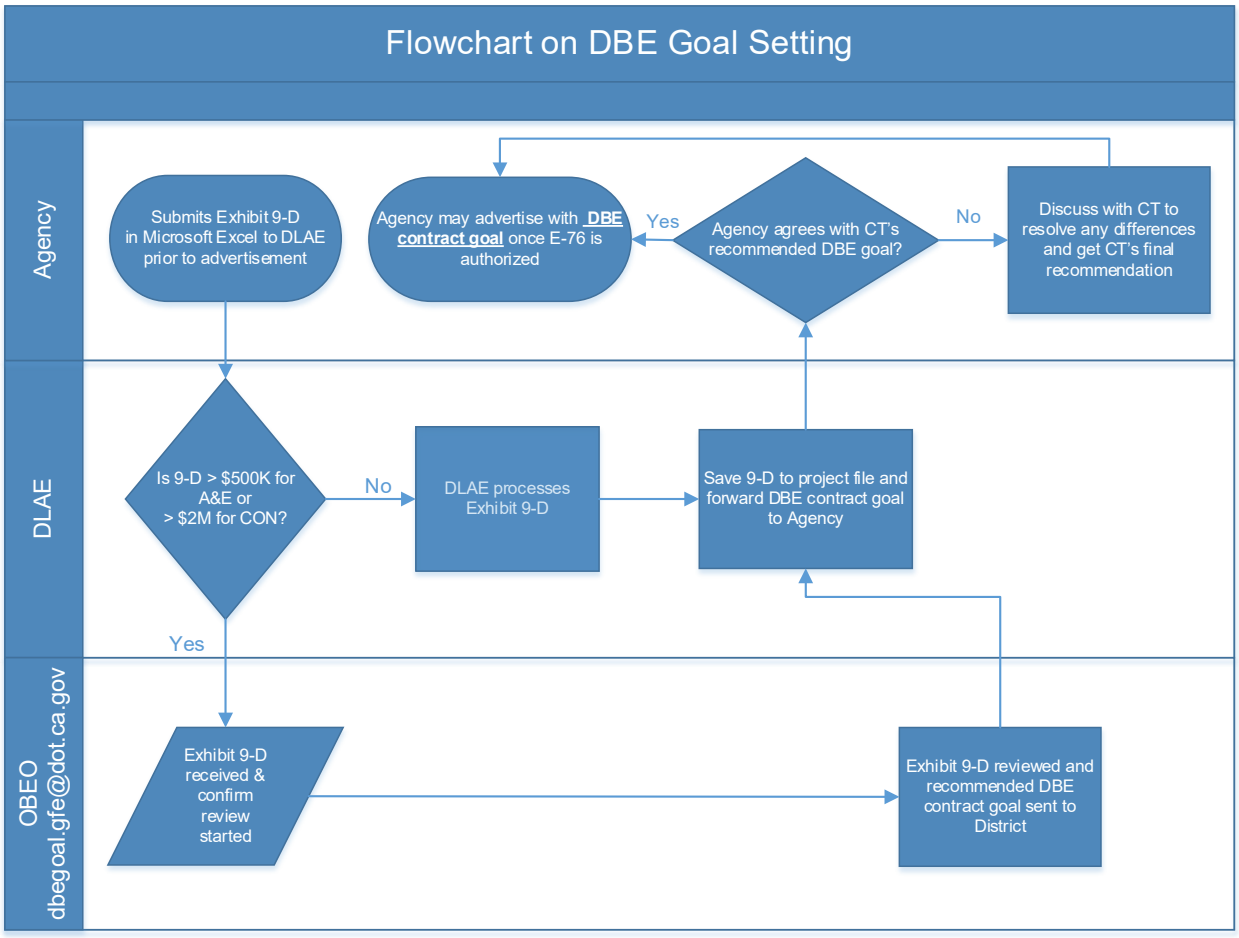

Figure 9-1: DBE Goal Setting Flowchart

Local Agency 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 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. Exhibits 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. Exhibits 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. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. 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 shall be included in the construction or consultant contract whether or not there is a DBE goal on the contract. The local agency shall submit this form to the DLAE within 30 days of contract execution for timely reporting. 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.

Final Report

Upon completion of the construction or consultant contract, regardless of whether DBE participation was obtained, a summary of the DBE records shall 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 local agency showing total dollars paid to each subcontractor and supplier whether DBE or non-DBE. Exhibit 17-F is reviewed by the local agency 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 local agency projects.

The local agency 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).

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 local agency 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 commensurate with its ownership interest in the joint venture: capital contribution, control, management, risks and profits.

Commercially Useful Function

Count expenditures to a DBE contractor, only if the DBE is performing a commercially useful function on that contract. The following examples explain what is considered to be performing a commercially useful function:

- A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, 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. To determine whether a DBE is performing a commercially useful function, the local agency must evaluate the amount of work subcontracted; industry practices; whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work; and other relevant factors.
- 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 local agency 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.
- When a DBE is presumed not to be performing a commercially useful function, as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The local agency's determination as to whether the firm is performing a commercially useful function should be based upon the type of work involved and normal industry practices.
- Local agencies' decision on commercially useful function matters are subject to review by the DLAE.

DBE Trucking

Use the following factors in determining whether 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.

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 shall 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 local agency 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.

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. Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or the local agency’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 local agency 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.

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 here.

Certification

A potential DBE may request certification from Caltrans by requesting an application form at:

Department of Transportation
Office of Civil Rights
Certification Unit
1823 14th Street, MS-79
Sacramento, CA 95811

DBE_Certification@dot.ca.gov

The form may also be downloaded at this website.

Decertification

If a DBE firm becomes ineligible in the middle of a contract (i.e., due to decertification), only that portion of work performed while certified will count toward DBE participation claimed by the local agency and Caltrans. If the DBE is already under contract prior to becoming ineligible, its participation is eligible to be counted toward meeting the contract goal by the prime contractor/consultant.

If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the local agency 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 a Local Agency 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. A Local Agency shall 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.

Each Local Agency 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. We emphasize that the local agency's determination concerning the sufficiency of the bidder's GFEs is a judgment call and meeting quantitative formulas is not required. Caltrans strongly cautions local agencies 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. Title 49 CFR 26 specifically prohibits federal-aid recipients from ignoring bona fide GFEs.

Anticipated Good Faith Efforts

The following types of actions should be considered by a Local Agency 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 Local Agencies to determine if the GFE was adequate or not prior to awarding the contract. In determining whether a bidder has made GFEs, the Local Agency may take into account the performance of other bidders in meeting the DBE Contract Goal. The Local Agency 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 at: https://www.fhwa.dot.gov/federal-aidessentials/knowmore.cfm

The Local Agency should ensure that the following is included in the contract documents:

- The Local Agency 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 Local Agencies 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.

Administrative Review and Reconsideration

An administrative review (see 49 CFR 26.53) and evaluation of the Good Faith Efforts (GFEs) should be made prior to award in each instance by the Local Agency. If the Local Agency determines that the apparent successful bidder has failed to meet the GFEs requirements, the Local Agency, before awarding the contract, must provide the apparent successful bidder the opportunity for administrative reconsideration in accordance with 49 CFR 26.53.

Substitutions

After a contract, which specified goals for the DBE participation, has been executed, adequate Good Faith Efforts (GFEs) are required for any needed substitution of DBE subcontractors to the extent needed to meet the DBE contract goal.

Local Agencies must require a prime contractor not to terminate for convenience a DBE subcontractor listed in Exhibit 15-G: Construction Contract DBE Commitment or an approved substitute DBE subcontractor and have the work performed of the terminated subcontract with its own forces or those of an affiliate without the Local Agency's prior written consent.

The Local Agency must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Local Agency's written consent due to the following, but not limited to, good reasons such as: the listed DBE subcontractor fails or refuses to execute a written contract, fails or refused to perform the work of its subcontract in a way consistent with normal industry standards, fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements, the listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness, as stated in 49 CFR 26.53(f).

When a DBE subcontract is terminated or when a DBE subcontractor fails to complete its work on the contract for any reason, the Local Agency must require the prime contractor to make GFEs to find another DBE subcontractor to substitute for the original DBE subcontractor. These GFEs shall be directed at finding another DBE subcontractor to perform at least the same amount of work under the contract as the DBE subcontractor that was terminated to the extent needed to meet the DBE contract goal.

Noncompliance

Local Agencies 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 Local Agency shall 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 Local Agency in writing.

Submitting the GFE and Supporting Document for Review

For construction contracts less than or equal to $2 million and consultant contracts less than or equal to $500,000, the agency must perform the GFE review if DBE goal is not met.

For construction contracts greater than $2 million and consultant contracts greater than $500,000 that had their DBE goal approved by Caltrans, if the low bidder or the most qualified consultant did not meet or exceed the DBE contract goal, the local agency must submit the GFE documentation to their DLAE for review.

The following are responsibilities and a flowchart on Good Faith Effort Review (see Figure 9.3) for local agencies, DLAEs, and DLA.

Local Agency Responsibilities

- The local agency must obtain, complete, and review all of the following documentation prior to determining if the low bidder or the most qualified consultant made a GFE:

  - A bid tabulation summary sheet such as included in Exhibit 15-D: Bid Tabulation Summary Sheet or Exhibit 10-O1: Consultant Proposal DBE Commitment.
  - All bidders' Exhibits 15-G: Construction Contract DBE Commitment or Exhibit 10-O1: Consultant Proposal DBE Commitment.
  - All bidders' Exhibit 15-H: Proposer/Bidder Good Faith Efforts or other documentation that all bidders' submit in lieu of Exhibit 15-H. If bidders did not submit GFE documentation within five (5) days after bid opening, it should be noted in Exhibit 9-E: Local Agency Good Faith Effort Review.
  - Exhibit 9-E: Local Agency Good Faith Effort Review.
- For construction contracts less than or equal to $2 million and consultant contracts less than or equal to $500,000, the agency has responsibility to perform the GFE review.
- For construction contracts greater than $2 million and consultant contracts greater than $500,000, if the low bidder or the most qualified consultant did not meet or exceed the DBE contract goal, the local agency must submit the above GFE documentation to their DLAE **prior to awarding a contract or starting the negotiation**.
  - Local agencies **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 Caltrans has determined that they made a GFE.
  - If Caltrans determines the GFE was inadequate, the local agency will take Caltrans feedback on GFE into consideration and re-evaluate the GFE. After the re-evaluation:
    - If the local agency still thinks the GFE is adequate, they can award the contract or start the negotiation process.
    - If the local agency 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 contracts greater than $2 million and consultant contracts greater than $500,000, e-mail all completed GFE documentation including the local agency's bid summary (Exhibit 15-D or Exhibit 10-O1), DBE commitments (Exhibit 15-G or Exhibit 10-O1), the bidders' GFEs (Exhibit 15-H), and the local agency's GFE evaluation (Exhibit 9-E) to DBEgoal.GFE@dot.ca.gov.
- Communicate the outcome of Caltrans GFE review to local agencies.

DLA Responsibilities

The following applies to the GFE evaluation for construction contracts greater than $2 million and consultant contracts greater than $500,000:

- After receiving a complete GFE package from the DLAE, reply to the DLAE when evaluation starts on the GFE review.
- Once the GFE review has been finished, reply to the DLAE with Caltrans' GFE review conclusion in a memorandum.

The process will not take more than 15 business days after receipt of the GFE package from the District. If there is no response from DLA after 15 days, the DLAE has the discretion to move forward.

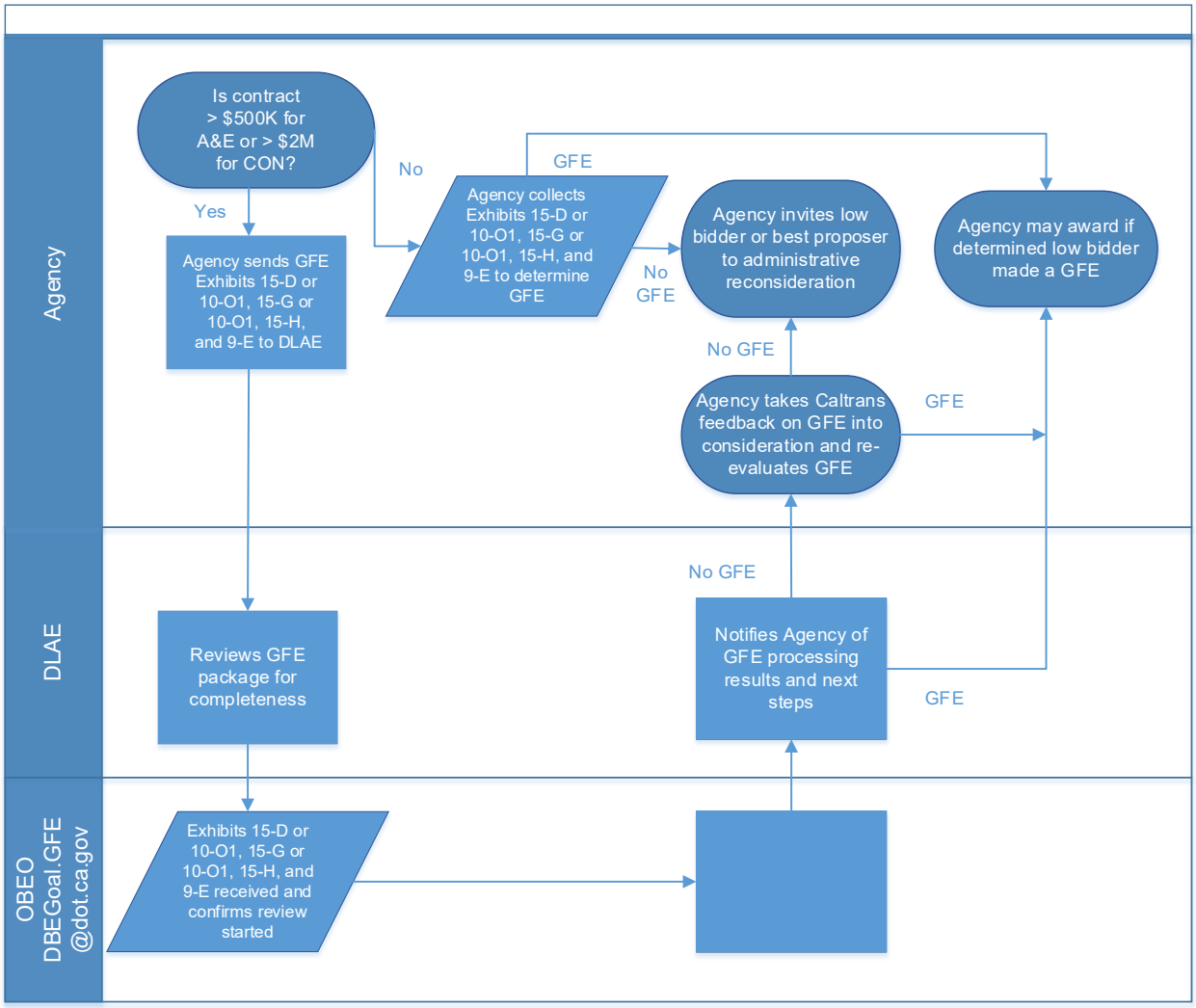

Figure 9.2: Good Faith Effort Review Flowchart

9.9 REFERENCES

49 CFR, Part 26 (DBE Regulations)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

49 CFR, Part 21 (Title VI Regulations)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr21_main_02.tpl

49 CFR, Part 27 (Accessibility)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr27_main_02.tpl

23 CFR 200 and 230 (EEO Contractor Compliance)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=23:1.0.1.3.7&idno=23

28 CFR, Part 35 (Accessibility)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=28:1.0.1.1.36&idno=28

23 USC 140(a) (EEO Contractor Compliance)
https://www.gpo.gov/fdsys/granule/USCODE-1995-title23/USCODE-1995-title23-chap1-sec140/content-detail.html

29 USC 791 et. Seq. (Accessibility)
https://www.gpo.gov/fdsys/granule/USCODE-2010-title29/USCODE-2010-title29-chap16-subchapV-sec791/content-detail.html

42 USC 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

Division of Local Assistance
https://dot.ca.gov/programs/local-assistance

Chapter 10 **Consultant Selection**

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Exhibits

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 10-A: A&E Consultant Financial Document Review Request
Exhibit 10-B: Suggested Consultant Evaluation Sheet
Exhibit 10-G: Individual A&E Task Order DBE Utilization (needs linked)
Exhibit 10-H: Sample Cost Proposal (Example#1 thru #4)
Exhibit 10-I: Notice to Proposers DBE Information
Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System
Exhibit 10-O1: Consultant Proposal DBE Commitment
Exhibit 10-O2: Consultant Contracts DBE Commitment
Exhibit 10-Q: Disclosure of Lobbying Activities
Exhibit 10-R: A&E Sample Contract 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

SECTION 10.1: FEDERALLY FUNDED A&E CONTRACTS

Procurement Planning		
1	**2**	**3**
Local Agency	Local Agency	Local Agency
*Select Project *Set Project Objectives *Determine Project Schedule *Obtain CTC Allocation/Federal Authorization to Proceed prior to beginning reimbursable work *LAPM Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement, if applicable: submit Conflict of Interest (COI) and Scope of Work (SOW) to DLA-HQ prior to contract advertisement.	*Identify Need for Consultant *Appoint Contract Administrator *Segment Project Work *Define SOW of A&E Consultant *Specify Products to be delivered	*Estimate Cost of Consultant Work (independent cost estimate) *Determine Type of Contract (Project Specific or On-Call) *Determine Method of Payment: Lump Sum; Cost-Plus- Fixed-Fee; Cost Per Unit of Work; or Specific Rate of Compensation *Submit Exhibit 9-D to DLAE

A&E = Architectural and Engineering
IOAI = Caltrans Independent Office of Audits and Investigations
CT = Caltrans
DBE = Disadvantaged Business Enterprise
DLA = Division of Local Assistance
DLAE = District Local Assistance Engineer
DLA-HQ = Division of Local Assistance-Headquarters
LAPG = Local Assistance Program Guidelines
LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram

Solicitation Documents and Advertisement		
4	5	6
Local Agency	Local Agency	Local Agency
*Determine Solicitation Document; RFP or RFQ *Appoint Consultant Selection Committee *Collect signed Conflict of Interest forms and Confidentiality Statements (see Exhibit 10-T: Conflict of Interest & Confidentiality Statement) from all members involved in process *Determine Procurement Schedule *Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ	*Prepare RFP or RFQ documents *Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see Exhibit 10-H: Sample Cost Proposal) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (*see* Exhibit 10-I: Notice to Proposers DBE Information), submittal deadline *Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites) *Issue RFP or RFQ (direct mailing, web posting)	*Prepare to respond to RFP/RFQ questions *Conduct Proposers Conference, if applicable *Receive Proposals or SOQs

A&E = Architectural and Engineering
IOAI = Caltrans Independent Office of Audits and Investigations
CT = Caltrans
DBE = Disadvantaged Business Enterprise
DLA = Division of Local Assistance
DLAE = District Local Assistance Engineer
DLA-HQ = Division of Local Assistance-Headquarters
LAPG = Local Assistance Program Guidelines
LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

Evaluation and Selection of Consultant		
		Contract Negotiation
7	8	9
Local Agency	Local Agency	Local Agency
*Distribute Proposals or SOQs to Selection Committee members *Ensure Committee members receive the appropriate score sheet to use (see Exhibit 10-B: Suggested Consultant Evaluation Sheet) *Convene Selection Committee and evaluate submittals; Perform reference checks *Develop Final Ranking or Short List *Notify proposers of ranking/Short List *Retain all original score sheets and summaries	*Send out RFPs to Short List (two-step process) *Conduct Interview of Short List (if needed) *Develop Final Ranking of Consultants, and notify all interviewees *Retain all original score sheets and summaries *Provide a copy of Standard Contract language to top ranked consultant and invite for negotiations (see Exhibit 10-R: A&E Sample Contract Language for standard contract language and provisions)	*Open and analyze cost proposal from the Highest Ranked firm Caltrans IOAI *Review and evaluate 10-A package and supporting documents, if applicable *Issue Financial Review Letter, if applicable *Perform contract audits and reviews, if applicable, or review of CPA audited ICR workpapers to issue Cognizant Letter of Approval

A&E = Architectural and Engineering
IOAI = Caltrans Independent Office of Audits and Investigations
CT = Caltrans
DBE = Disadvantaged Business Enterprise
DLA = Division of Local Assistance
DLAE = District Local Assistance Engineer
DLA-HQ = Division of Local Assistance-Headquarters
LAPG = Local Assistance Program Guidelines
LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

Contract Negotiation		
	Contract Execution	
10	**11**	**12**
Local Agency	**Local Agency**	**Local Agency**
*Negotiate contract costs with the most qualified Consultant *Prepare and retain record of cost negotiations *Initiate CT IOAI Financial Review *Section* (LAPM Section 10.1.3) and send documents (Exhibit 10-A: A&E Consultant Financial Document Review Request), if applicable, to Caltrans IOAI *Receive and analyze findings of the Financial Review Letter from CT IOAI, if any *Address and resolve all findings by IOAI and incorporate into final contract and cost proposal *If negotiations with First ranked firm is unsuccessful, formally terminate cost negotiations with Consultant and begin Step 9 with next ranked consultant * Complete Exhibit 10-C database to DLA-HQ prior to award or after award, but no later than the first invoice *Retain Exhibit 10-C	*Finalize contract, cost proposal *Retain copy of contract Financial Review Letter with acceptance, denial, or adjustment of the ICR *Sign and Execute contract *Offer and conduct debriefing meetings with consultant who asked for one *Send copies of executed contract and DBE Commitment (Exhibits 10-O1: Consultant Proposal DBE Commitment and Exhibit 10-O2: Consultant Contract DBE Commitment) to DLAE *Close out contract procurement process	**DLAE** *Prior to concurring with invoice payment related to consultant services, ensure that district confirms submittal of Exhibit 10-C and has a copy of the executed consultant contract on file and 10-O1 and 10-O2. Also, check IOAI database to ensure that LAPM Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System, if applicable, has been received by IOAI **Caltrans IOAI** *Perform Incurred Cost Audit, if selected

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Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

10.1.1 GENERAL

Introduction

A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid funded project. Local agencies requesting federal funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

Definition of an Architectural and Engineering Consultant

23 Code of Federal Regulations §172 and CA State Law further defines A&E services and includes those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management are termed Architectural and Engineering (A&E) Consultants.

Architectural and Engineering Consultants

The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency must be sealed and shall not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency 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 local agency 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 local agency.

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 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: http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
- DIR Wage Determination website: http://www.dir.ca.gov/oprl/DPreWageDetermination.htm
- Caltrans Prevailing Wage Interpretive Guidance: https://ig.dot.ca.gov/resources/interpretive-guidance

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 local agency 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 local agency 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 local agency. 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 local agency. 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.

Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency 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:

- Local agency shall 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 shall 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 shall 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 shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements;
- Local agency shall disclose in writing any potential conflict of interest to FHWA.

Consultants Performing Work on Multiple Phases of Federal-aid Projects

Local agencies sometimes wish 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 local agencies 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 local agency files.

Miscellaneous Considerations Authorization to Proceed

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the 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 the Local Assistance Program Guidelines (LAPG), Chapter 23: Local Agency State Transportation Improvement Program Projects, for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency 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 local agency's capabilities, its staff availability of the required expertise, and its funding resources. If the local agency 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 local agency determines that there is a need to solicit assistance from another local agency, 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.

Appointing the Contract Administrator

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed 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 local agency 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 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;
- 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;
- Documenting contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.333;
- 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 local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- 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;
- Identifies other local agency 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).

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 and Standard Environmental Reference (SER) Chapters 31: Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) and Chapter 32: Environmental Impact Statement (EIS). Final design shall not begin until NEPA environmental approval has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

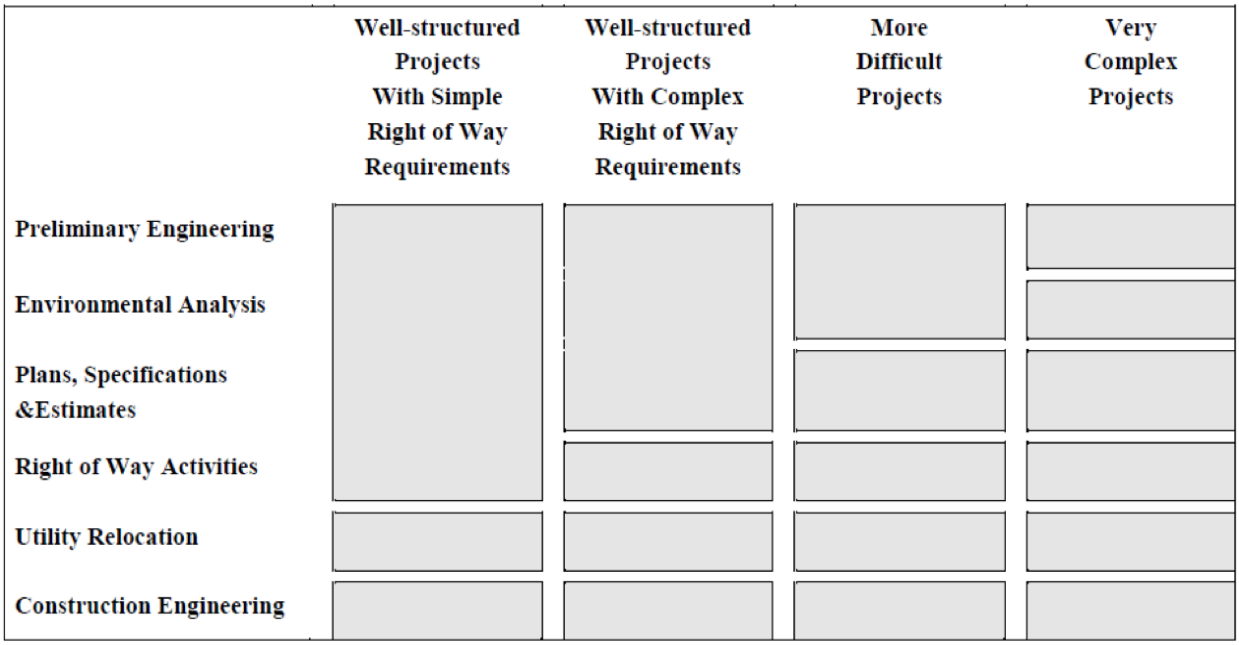

Figure 10-2: Segmenting Consultant Work

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.

Non-Discrimination Clause

The Non-Discrimination Clause (Exhibit 10-R: A&E Boilerplate Agreement Language, Article XVI 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, Part 26) require a local agency 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 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 is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost comparison of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency'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 local agency 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 shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172). The maximum dollar amount for all contracts awarded under the solicitation is stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. If the solicitation lists that up to 5 contracts may be awarded, the aggregate amount of these 5 contracts is the maximum contract dollar amount. 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 (two options exist: geographically designated areas or additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation).
    - To maintain the intent of the Brooks Act (40 USC 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 local agency uses to procure project specific work under the contract.
- No task order is valid unless the on-call contract is still enforced. For example, if the on-call contract is expired, all task orders issued after the contract expiration date will become invalid.
- 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 local agency will use to award/execute task orders among the consultants:
  - Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ 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)(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 shall 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 shall send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice shall identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency shall not pay any amount under this Agreement that

would exceed the NTE Sum, and Consultant shall not enter into a Task Order that exceeds the NTE Sum."

Determining the Project Schedule

The local agency 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. Four methods are permitted depending on the scope of services to be performed reference 23 CFR 172.9(b):

- Cost-Plus-Fixed Fee (see Exhibit 10-H: Sample Cost Proposal, Example #1);
- Cost Per Unit of Work (see Exhibit 10-H, Example #3);
- Specific Rates of Compensation (see Exhibit 10-H, Example #2);
- Lump Sum (see Exhibit 10-H, Example #1).

The method of payment to the consultant shall 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.

The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used. Both of these methods are explicitly prohibited by Federal Regulations.

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 shall 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.

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 shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H: Sample Cost Proposal Example #1 and Exhibit 10-R: A&E Sample Contract Language, Article V, *Option 1* in this chapter). 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 local agency before they incur work on the contract or the costs can

be questioned or disallowed. Local agencies are not required to update the Exhibit 10-C database. For more details reference Section 10.1.8.

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 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 shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #3 and Exhibit 10-R, Article V Option 2).

Specified 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 shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #2 and Exhibit 10-R, 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-H: Sample Cost Proposal, Example #1 and Exhibit 10-R: A&E Sample Contract 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 shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

Changes to Exhibit 10-H requiring resubmittal to Independent Office of Audits and Investigations for review:

- Consultant name change
- New participating subconsultant
- Change in ICR rate

Since these changes require an amendment, local agency is to update the Exhibit 10-C database.

A firm fixed price method of payment is not the same as lump sum. A firm fixed price contract shall not be amended.

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 funds. All proposed A&E contracts and supporting documents 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. 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.

Local agencies, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. Local agencies 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 local agencies and Caltrans, (i.e. Master Agreements);
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 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), Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;
- 2 CFR, Part 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 4525-4529; and
- Proposed contract terms and conditions.

See Section 10.10: References of this Chapter for links to above referenced standards.

Audit Guidance Available

The American Association of State Highway and Transportation Officials, Uniform Audit & Accounting Guide (AASHTO Audit Guide), which is referred to frequently in this section, is a valuable tool to guide local agencies, consultants and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR compliant Indirect Cost Rates (ICR). The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

Local agencies 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, Ch 2.5C. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA's National Highway Institute (see http://www.nhi.fhwa.dot.gov/default.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 Caltrans Local Assistance Blog at http://www.localassistanceblog.com/. For FHWA's Q&A for ICRs and audits, and A&E related services, visit FHWA at http://www.fhwa.dot.gov/programadmin/172qa.cfm.

Allowable Costs

23 USC 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, shall be performed and audited in compliance with the Federal cost principles.

Local agencies 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. Costs shall 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. Examples of Cost Analysis Worksheets are provided at Exhibit 10-H1 through 4.

Local agencies 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

audited by Caltrans. Consultants shall update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

A consultant's accepted ICR for its one-year applicable accounting period shall 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 shall 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.

Consultants shall 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 Part 172 and 48 CFR Part 31.

Generally, whenever local agencies, consultants and/or contractors are unable to provide requested documentation, it shall 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**. For more references, refer to Applicable Standards in this chapter.

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 part 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 shall perform an audit or review of a consultant's and subconsultant's ICR(s) to provide reasonable assurance of compliance with Federal cost principles.

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, Chapter 1, Part 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172,

and 48 CFR, Chapter 1, Part 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;

The outcome of an audit or review 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. Local agencies shall 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. Local agencies may check IOAI's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI's website at https://ig.dot.ca.gov/audits/. 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.

ICRs that have not been accepted by Caltrans 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 local agency contracts using pass-through Caltrans funding. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agencies.

Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than $150K are subject to an ICR financial review by IOAI. The financial documents required are detailed in Exhibit 10-A, A&E Consultant Financial Document Review Request Letter and Exhibit 10-A Checklist. 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 a local agency 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;

- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

Local Agencies' Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A: A&E Consultant Financial Document Review Request and the Exhibit 10-A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System and Exhibit 10-H: Cost Proposal for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in Exhibit 10-K and the consultant's ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K 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 shortlist or prequalified list.

The Exhibit 10-H: Cost Proposal includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies 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 local agency 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.

Contracts below $150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR, Chapter 1, Part 31, and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Exhibit 10-A on the requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to: conformance.review@dot.ca.gov.

Alternatively, if you do not have Internet access, you can mail Financial Review packets to:

Department of Transportation
Independent Office of Audits and Investigations
MS 2 Attention: External Audit Manager
P.O. Box 942874
Sacramento, CA 94274-0001

Consultants' Responsibilities (Both prime consultants and subconsultants)

A&E prime consultants and subconsultants in contract with local agencies using state or federal-aid highway funds should refer to Exhibit 10-A and the 10-A Checklist for the ICR financial documents required to be submitted to their local agency. Consultants must complete the "Annual Certification of Indirect Costs and Financial Management System" (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR, Chapter 1, Part 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 Exhibit 10-A and 10-K should be submitted to the local agency 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 Exhibit 10-K to the Local Agency.

Consultants must follow all the federal, state, and contract requirements outlined above in the Section above, "Applicable Standards". 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 sub-consultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles. Figure 10-3 at the end of this chapter provides an example of a Standard Indirect Cost Rate Schedule 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.

For guidance see Caltrans' Prevailing Wage Interpretive Guidance and webinar on IOAI's website https://ig.dot.ca.gov/audits.

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 Exhibit 10-A and Exhibit 10-A Checklist) from the local agency, IOAI will review the proposed ICR and supporting documents and notify local agencies in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR and a revised final cost proposal (if applicable) is received. 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. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements). As a result of the audit, the local agency 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 Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. There is also a review program at Appendix A which serves as a guide for CPAs and IOAI when performing ICR audits and can also be used as a resource for consultants when preparing for an ICR 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, local agencies are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). Local agencies should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The local agencies may be subject to sanctions outlined in LAPM Chapter 20: Deficiencies and 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.

Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company

Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	$123,456,789	($934,568)	(1)(15)	$122,522,221	$85,765,555	$36,756,666
Fringe Benefits						
Vacation/Paid Leaves	$17,283,950			$17,283,950	$12,098,765	$5,185,185
Payroll Taxes	$1,530,864	($30,617)	(15)	$1,500,247	$1,050,173	$450,074
Medical Insurance	$10,864,197			$10,864,197	$7,604,938	$3,259,259
401K Match	$4,938,272			$4,938,272	$3,456,790	$1,481,481
Incentives and Bonus	$15,308,642	($3,123,456)	(2)	$12,185,186	$8,529,630	$3,655,556
Other Employee Benefits	$2,515,280	($553,433)	(3)	$1,961,847	$1,373,293	$588,554
Total Fringe Benefits	$52,441,206	($3,707,506)		$48,733,700	$34,113,590	$14,620,110
General & Administrative Overhead						
Indirect Overhead Labor	$72,696,030	($4,452,541)	(1)(2)(4)(15)	$68,243,489	$65,790,948	$2,452,541
Purchased Labor/Subconsultants	$22,433,019	($22,433,019)	(5)	$ -	$ -	$ -
Office Rent	$12,345,679	($987,654)	(6)	$11,358,025	$11,038,025	$320,000
Supplies & Utilities	$5,753,086			$5,753,086	$4,027,160	$1,725,926
Postage and Shipping	$1,770,000	$321,456	(5)	$2,091,456	$1,464,019	$627,437
Equipment and Maintenance	$3,812,346			$3,812,346	$2,512,789	$1,299,557
Depreciation Expense	$6,202,469	($1,345,678)	(7)	$4,856,791	$3,205,482	$1,651,309
Interest	$123,456	($123,456)	(8)	$ -	$ -	$ -
Dues and Subscription	$123,456	($12,345)	(9)	$111,111	$77,778	$33,333
Advertising & Marketing	$427,406	($45,678)	(10)	$381,728	$267,210	$114,518
Vehicles	$5,896,123	($147,403)	(5)(11)(14)	$5,748,720	$4,024,104	$1,724,616
Bad debts	$12,345	($12,345)	(12)	$ -	$ -	$ -
Legal and Accounting Services	$3,713,580	($222,815)	(13)	$3,490,765	$3,490,765	$ -
Fines and Penalties	$80,000	($80,000)	(16)	$ -	$ -	$ -
Total General & Admin. Overhead	$135,388,995	($29,541,478)		$105,847,517	$95,898,280	$9,949,237
Total Indirect Costs				$154,581,216	$130,011,870	$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

Figure 10.3: Standard Indirect Cost Rate Schedule

FAR References:

(1) FAR 31.202: Uncompensated overtime.
(2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
(3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
(4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
(5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
(6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
(7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
(8) FAR 31.205-20: Interest and other financial costs not allowable.
(9) FAR 31.201-2: Non-business related dues and subscriptions.
(10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
(11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
(12) FAR 31-205-3: Bad debts and collection costs.
(13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
(14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
(15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
(16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

This section outlines the audit and review process for A&E contracts that at any time use federal and/or state funds. All proposed A&E contracts and supporting documents 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. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

10.1.4 Consultant Selection Methods

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- 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.

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 local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 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. A 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 local agencies 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 prequalification 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.

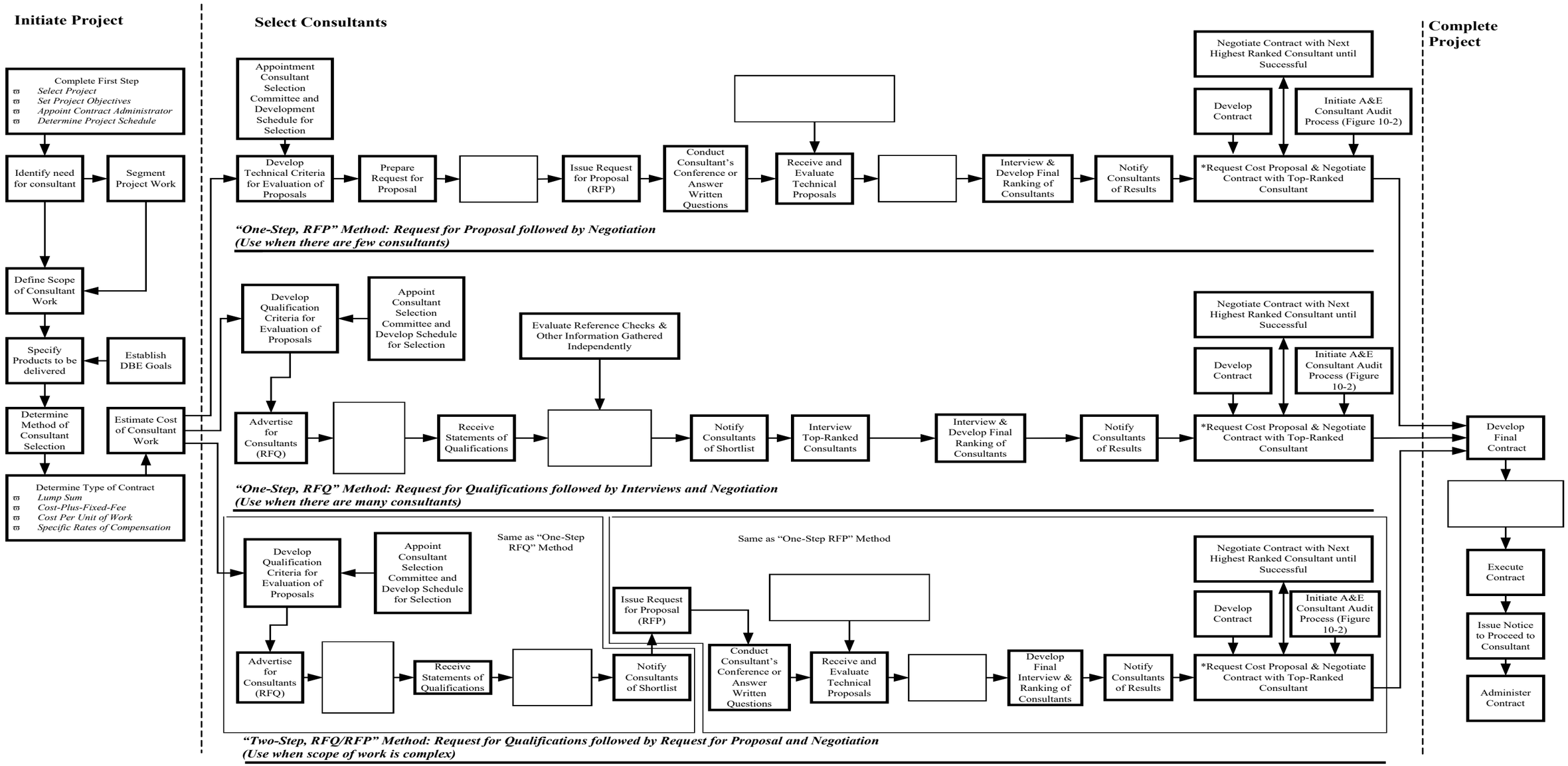

Figure 10-4: Consultant Selection Flowchart

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 shall 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 shortlist 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 local agency 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 local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (*23 CFR 172*) 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: Panel Member 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 shall not be used as factor in the evaluation, ranking, and selection phase. All non-technical evaluation criteria, including DBE participation, shall not exceed 10 percent (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 local agency 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 Exhibit 10-H: Sample Cost Proposal (Example 3) for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3: 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;
- 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 Part 200.318(k), 2 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 shall 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 local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency 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 shall 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, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

Issue/Publish RFP

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line 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 local agency 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 local agency 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 shall be rejected. Submittal of additional information after the due date shall 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(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(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) 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 shall 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 local agency 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 and all Subconsultant), and contract audit and review documents such as Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System of Costs and Financial Management System and Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist, 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.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds 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 local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall 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 shall not be opened by the local agency or any private entity that the local agency 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 local agency's written policies and procedures.

The independent cost estimate, developed by the local agency 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. A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process in this chapter). Local agency 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 local agency. The local agency 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 local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist: https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement) 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 local agency must submit a completed Exhibit 10-C for all new or amended federal funded A&E consultant contracts using the database at http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (please use Firefox or Chrome if not supported by your browser).

If there are any changes requiring an amendment to the contract after submittal of Exhibit 10-C, the local agency must submit an updated Exhibit 10-C and all contract amendments to http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts.

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 shortlist 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 local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) 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: Panel Member 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. 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 local agency 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 Exhibit 10-H: Sample Cost Proposal for sample cost proposal formats;
- 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 Part 200.318(k).

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 shall 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 local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by *48 CFR Part 16.301-3*, *2 CFR Part 200*, and *48 CFR Part 31*. The local agency 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 shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant 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 local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency 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 local agency for the RFQ. The RFQs shall 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 local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ on line 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 Shortlist

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 shall be rejected. Submittal of additional information after the due date shall 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 a Public Interest Finding (PIF) 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 shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

Notify Consultants of Shortlist

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 shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. 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 shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency 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 local agency in writing. It is required that all consultants on the shortlist 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 shall 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 shall 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 local agency shall 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 meets 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 shortlist.

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 proposal (for both Prime and all Subconsultant), and contract audit and review documents such as Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System and Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist, 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 consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency'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 local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

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 shall be returned to consultants.

Cost proposals in electronic form shall 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 shall not be opened by the local agency or any private entity that the local agency 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 local agency's written policies and procedures.

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process earlier in this chapter). Local agency 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 local agency. For on-call contracts, typically a price agreement is reached based on specific rate 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 local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist at https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement), 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 local agency must submit a completed Exhibit 10-C for all new or amended federal funded A&E consultant contracts using the database at http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (please use Firefox or Chrome if not supported by your browser).

If there are any changes to the contract after submittal of Exhibit 10-C, the local agency must submit an updated Exhibit 10-C and all contract amendments to http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts.

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 an 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 prequalification 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 prequalification 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 this method (up to the development and notification of the shortlist) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4: Consultant Selection Flowchart. 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 combined 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. 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 thru subsequent competition or mini-RFPs amongst the on-call consultants. 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.

Local agencies may also use this 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

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 can include: availability of personnel, staff capabilities, DBE (10% or less of overall

score), completion time, experience of consultant, specialized expertise, and past performance. The overall DBE goal was established at the master on-call contract.

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 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 local agency 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)
- Professional references by the firm with the local agency

- 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 local agency
- Use of sub-consultants 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 pre-qualifying consultant 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 shall be rejected. Submittal of additional information after the due date shall not be allowed.

Local agency must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a per-qualified list. Whether the Local agency 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 local agency must specify how long the pre-qualified list last, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (*23 CFR 172*) 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.

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 Pre-Qualified Consultants on List

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 sub-consultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Sub-consultants, DBE, their proposed participation, and other related information

Conduct Proposer's Conference or Answer Written Questions

The local agency 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 local agency 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 shall be rejected. Submittal of additional information after the due date shall 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 a Public Interest Finding (LAPM Exhibit 12-F) 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 shall 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 (shortlisted), 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 of the consultants on the shortlist.

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 proposal (for both prime and all subconsultants) and contract audit and review documents, such as Exhibit 10-K and Exhibit 10-A, 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 local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

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 shall be returned to consultants.

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process). The local agency 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 local agency.

The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist at https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement).

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 local agency 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, 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 local agency 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.;
- Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subs), and Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist and all supporting documents, if applicable (contracts above $150,000), 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;
- Exhibit 10-C: A&E Consultant Contract Database must be used to ensure that required documentation has been provided;
- A cost proposal (see Exhibit 10-H: Sample 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 part 1200 and 2 CFR part 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 shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency and shall be retained for a three-year period after processing of the final voucher by FHWA.

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 contracts shall have a begin and end date. Local agency 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 send 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 may 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 local agency 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 local agency. Refer to LAPM Chapter 9: Civil Rights & Disadvantaged Business Enterprise and Title 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 local agency 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 local agency.

For federal reimbursement of consultant costs on a project, the local agency 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 Information

DLAE must confirm that the local agency has submitted copies of Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subconsultants) to Caltrans IOAI and agency has submitted Exhibit 10-C: Consultant Contract Database to Caltrans.

The local agency 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 shall 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 Q&As at: http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, 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 shall 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 local agency 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 shall 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 shall 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 local agency 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 local agency funding. Section 10.1.3: A&E Consultant Audit and Review Process of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment. All amendments shall incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit Exhibit 10-C: Consultant Contract Reviewers Checklist Database to http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (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 local agency.

Project Records

Federal-Aid Highway Program funding recipients and sub-recipients 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

Part 200). These records shall 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 Part 200.333).*

For audit purposes, project records and documentation shall 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 DBE and First-Tier Subcontractors, and Exhibit 17-O: DBE 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 (Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System) for contracts over $150,000 or more;
- A&E Consultant Audit Request Letter and Checklist (Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist) for contracts over $150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see Exhibit 10-R: A&E Boilerplate Agreement Language and Exhibit 10-H: Sample Cost Proposal);
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see Exhibit 10-S: Consultant Performance Evaluation);
- Consultant contract checklists (see Exhibit 10-C: 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 shall be completed if the consultant needs to disclose any lobbying activities.

Retention Clauses

At the option of the local agency, 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 XXXI).

Review of Local 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 local agency 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.

Exhibit 10-C: A&E Consultant Contract Database is to be completed prior to award, or after contract award but no later than the first invoice. A copy of Exhibit 10-C must be retained in the local agency 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. See 2 CFR 200 and CA Government Codes 10340 and 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 not a 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 shall use 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 (State-Only funded section) shall 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 shall 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. A Public Interest Finding prepared by the local agency 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.

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 local agency shall:

- 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 local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

Retaining a Consultant as an Agency Engineer or in Management Support Role

A local agency may retain qualified consultants in a management support role 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 consultant in a management support role 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 consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency 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. Consultants in a Management Support Role funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency 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 members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions shall 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, a local agency consultant in a management support role shall 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 local agency 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 local agency'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 shall 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 shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) shall 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 shall 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 local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as Projects of Division Interest may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies 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 consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at aeoversight@dot.ca.gov, prior to solicitation.
- Once the local agency receives FHWA's written response, the local agency may need to revise the documents reflecting FHWA's opinions and can proceed with the RFQ.
- After consultant selection, the local agency shall submit the completed Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement to the DLA-HQ at aeoversight@dot.ca.gov. Local agency will receive FHWA's approved Exhibit 10-U via email.

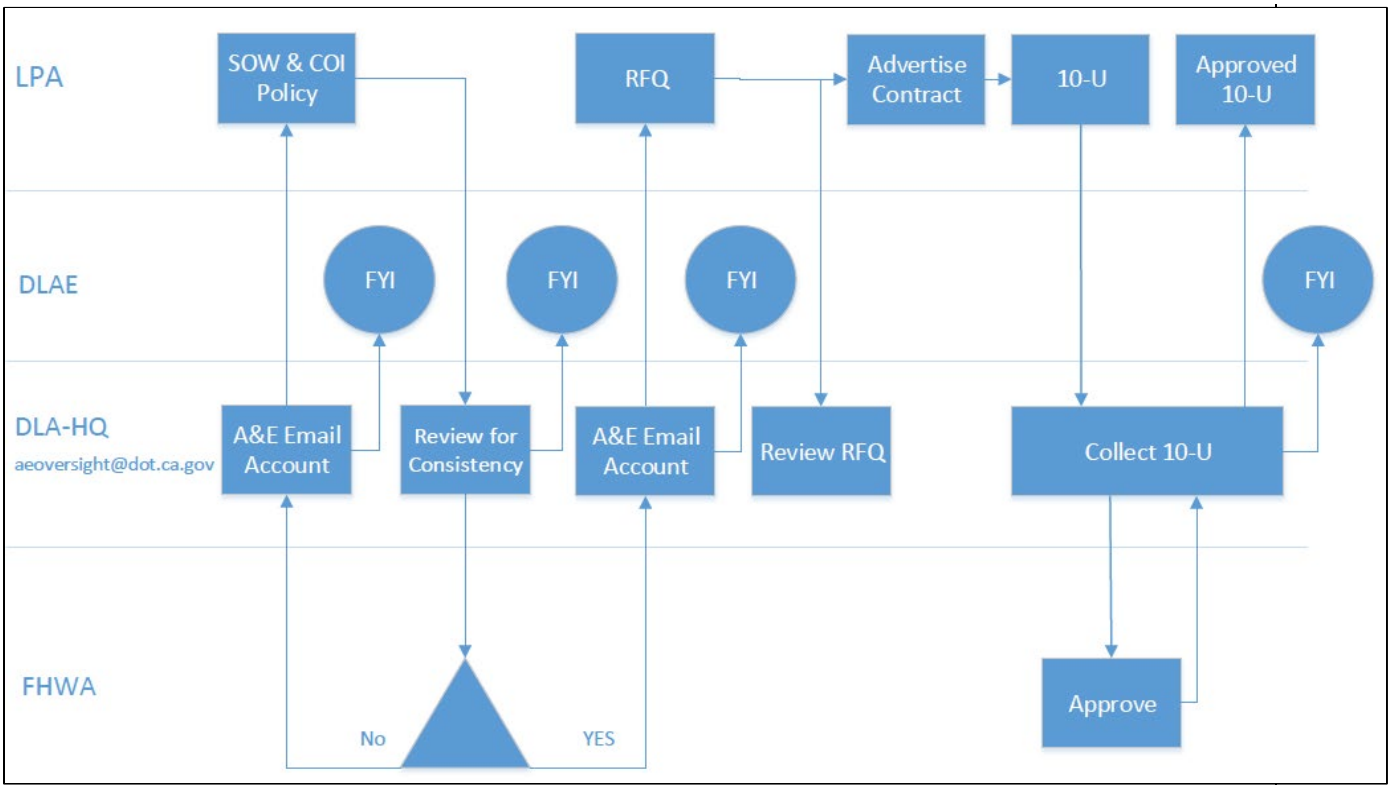

Figure 10-5: Consultant in a Management Support Role Flowchart

Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency 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 local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract shall 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 local agency.

10.1.10 Program Management

According to 23 CFR §172.5, local agencies are required to adopt written policies and procedures prescribed by Caltrans. The local agency shall adopt Caltrans Local Assistance Chapter 10: Consultant Selection. Local agencies 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 200.333 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.

An example resolution is located at: https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement.

10.1.11 References

23 CFR, Part 172 Administration of Engineering and Design Related Service Contracts
http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3

40 USC, Section 1104 Brooks Act
http://www.fhwa.dot.gov/programadmin/121205.cfm

41 CFR Public Contracts and Property Management
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl

41 USC Public Contracts
http://law.onecle.com/uscode/41/index.html

23 USC Letting of Contracts
http://www.fhwa.dot.gov/map21/docs/title23usc.pdf

48 CFR, Chapter 1, Part 15.404
https://www.acquisition.gov/far/html/FARTOCP15.html

48 CFR, Chapter 1, Part 31
https://www.acquisition.gov/far/html/FARTOCP15.html

Title 48, Part 16 – Types of Contracts
http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1

48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts
https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3

48 CFR 31.201-3
https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf

48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900
https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99

2 CFR Part 200
http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

49 CFR, Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide
http://audit.transportation.org/Pages/default.aspx

Caltrans Division of Procurement and Contracts Website
http://www.dot.ca.gov/dpac/index.html

California Labor Code, Section 1775
http://law.onecle.com/california/labor/1775.html

Government Auditing Standards (GAS) issued by the United States Government Accountability Office
http://www.gao.gov/yellowbook/overview

Government Code Sections 4525 through 4529.5
http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5

OMB Circular A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
https://www.whitehouse.gov/omb/circulars_a110

Standard Environmental Reference (SER)
http://www.dot.ca.gov/ser/

10.2: STATE-ONLY FUNDED A&E CONTRACTS

A&E State-Only	*Division of Local Assistance Minimum Requirements for State-only funded A&E Contracts*
	A. Written Procedures
	B. Conflict of Interest
	C. Records
	D. Full & Open Competition
	E. Selection Basis
	F. Publication
	G. Solicitation
	H. Cost Analysis
	I. Negotiations
	J. Audit and Review Process
	K. Exhibit 10-C: A&E Consultant Contracts Database

10.2.1 GENERAL

Local Agencies 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 local agency shall use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections.

All consultants must comply with 48 Code of Federal Regulations (CFR) Part 31: Contract Cost Principles and Procedures. Also, consultants and Local Agencies must comply with 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections §200.318-200.326 Procurement Standards (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance).

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 LAPM Section 10.1.3 A&E Consultant Audit and Review Process.

For consultant contracts, procured with local or state funds, to provide services for federal-aid projects, or to oversee or manage other consultants providing these services, the Consultant in Management Support Role process must be completed to be eligible for reimbursement. Refer to Chapter 10.1.9 Miscellaneous Considerations: Retaining a Consultant as an Agency Engineer or in a Management Support Role.

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 LAPM 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 shall 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 §4527

10.2.3 MINIMUM AUDIT REQUIREMENTS

A. Written Procedures

Local agencies shall follow the minimum requirements listed below in addition to any local laws and regulations.

Reference: California Government Code §4526

B. Conflict of Interest

The local agency 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.

References:
California Government Code §4526
California Government Code §1090
California Government Code §4529.12

C. Records

Local agencies shall keep adequate records of all contracts including the procurement, project management, accounting and financial administration.

References:
California Government Code §4529.14
California Government Code §4006

D. Full & Open competition

All A&E contracts shall 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.

References:
California Government Code §4526
California Government Code §4527

E. Selection Basis

Selection of a firm shall be based on qualifications and the order of ranked preference.

References:
California Government Code §4526
California Government Code §4527

F. Publication

Solicitations for A&E contracts shall be in a manner that is open and competitive.

Reference: California Government Code §4527

G. Solicitation

The solicitations shall include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

Reference: California Government Code §4527

H. Cost Analysis

An independent cost comparison to the consultant's cost proposal shall be done in order to ensure the contract is negotiated at a fair and reasonable price.

Reference: California Government Code §4528

I. Negotiations

Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.

Reference: California Government Code §4528

J. Audit and Review Process

A&E contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits. All agencies shall follow the Audit and Review Process as stated in LAPM Section 10.3: A&E Consultant Audit and Review Process.
http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf
http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10a.pdf

Reference: California Government Code §4529.14

K. Exhibit 10-C: A&E Consultant Contract Database

Exhibit 10-C: A&E Consultant Contract Database must be completed at http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (please use Firefox or Chrome if not supported by your browser) prior to contract award, or after contract award but no later than the first invoice.

CA Government Code References

California GOV §1090
(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they

are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

California GOV §4006
Plans, specifications, work authorizations describing work to be performed, and all other information referred to in this chapter are open to inspection and examination as a public record.

California GOV §4525
For purposes of this chapter, the following terms have the following meaning:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "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.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

California GOV §4526
Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

California GOV §4527
In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

California GOV §4528
(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

California GOV §4529
This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

California GOV §4529.12
All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a

financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

California GOV §4529.14
Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

California GOV §4529.20
This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.

Federal Highway Administration Memorandum 2 CFR 200 Implementation Guidance 12/4/2014

Attachment A: FHWA 2 CFR 200 Uniform Guidance – Questions and Answers
Question 21: "Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?"

Answer: Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.

Figure 10.2 State-Only Funded Procurement Criteria

To comply with CA Government Code (GC) 4525-4529.5, 48 Code of Federal Regulations (CFR) Part 31: Contract Cost Principles and Procedures, 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (excluding sections 200.318-200.326), Caltrans Local Assistance Procedures Manual (LAPM) and other applicable STATE and FEDERAL regulations.

A&E Consultants		
	Requirements for LGAs that use State funding	**Use State requirements below**
A.	Written Procedures	GC 4526
B.	Conflict of Interest	GC 1090, GC 4527(b), GC 4529.12
C.	Records	GC 4529.14, 4006
D.	Full & Open Competition	GC 4526, GC 4527, GC 4529.12
E.	Selection Basis	GC 4526*, 4527
F.	Publication	GC 4527
G.	Solicitation	GC 4527
H.	Cost Analysis	GC 4528
I.	Negotiations	GC 4528
J.	A&I Audit & Review Process	GC 4529.14, LAPM Ch. 10, 2 CFR 200
K.	Exhibit 10-C: A&E Consultant Contract Database	LAPM Ch. 10.2

*Mini Brooks Act - State regulation requiring the initial selection of engineering and architecture firms be based upon qualifications and experience rather than by price. Price is then later negotiated.

10.3: NON-A&E CONTRACTS

Scope

This section covers the procurement requirements for the services that are not included in Section 10.1 Federal and Section 10.2 State-Only. 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 local agencies 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. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

Local agency shall designate one person within the local agency as a contract manager.

(PCC 10348.5)

Determining Non-A&E

After identifying that there is a need for consulting services, the local agency shall 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 type 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 10.2.2 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 local agency 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

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, funds 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 LAPG Chapter 13: Intelligent Transportation Systems.

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), 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, Local agencies must comply with 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections §200.318-200.326 Procurement Standards (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance, Attachment A). Local agencies 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 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. Local agency 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) shall 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. Local agency shall 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 shall 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. Local agency must have a written procedure for evaluating proposals. (PCC 10344)

RFP Basic Requirements

A. There are two general types of consulting service contract solicitations:

B. Request for Proposal using Cost only

C. Request for Proposal using Cost and Qualifications

The local agency 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 shall follow and the elements they shall 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 local agency 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. Local agency must require consultants to submit their proposals and cost in a separate, sealed envelope.

B. Local agency shall 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 shall 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. Local agency must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized shall be given to the cost amount proposed by the consultant.

B. Local agency shall determine those that meet the format requirements specified in the RFP.

C. Local agency evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets shall 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 shall 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 Local Assistance website at https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/ae/files/rfp-example-non-ae.docx and may be modified.

Submission of Exhibit 10-C: Consultant Contract Database to Caltrans HQ 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.
- Sub-contracts - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant 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.

Local agency is not required to award a contract if it is determined that the contract price is not reasonable. (PCC 10340(c))

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 local agency 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 shall 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, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall 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 shall 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 shall 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 local agency, 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 shall 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 proposal must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract shall 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) (LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding) 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.

Chapter 11 Design Guidance

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EXHIBITS

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

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

Chapter 11 **Design Guidance**

11.1 INTRODUCTION

The purpose of this chapter is to provide statewide design guidance applicable to local agency administered federal-aid transportation projects. These guidlines and procedures should be considered in the design of transportation projects and applied with enigneering knowledge, experience, and judgement to provide a safe, sustainable, integrated, and efficient transportation system.

Definitions

Alteration – In this manual, an alteration, as applicable to the Americans with Disabilities Act (ADA), is a change to a roadway made by, on behalf of, or for the use of a public accommodation or commercial roadway that affects or could affect the usability of the roadway, or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, and changes or rearrangement of the structural parts or elements. The following roadway treatments are considered by the Federal Highway Administration (FHWA) to be an alteration:

- Addition of New Layer of Hot Mix Asphalt
- Hot Mix Asphalt and Concrete Rehabilitation and Reconstruction
- Cape Seals
- Hot In-Place Recycling
- Microsurfacing / Thin Lift Overlay
- Mill & Fill / Mill & Overlay
- Reconstruction
- Open-Graded Friction Course

Design Standards – The adopted design standards, including: highway design specifications, standard plans, construction contract specifications, statewide bridge design procedures, and other procedures, guides, and references listed herein for application in the geometric, structural, pavement, and hydraulic design of local agency highway transportation projects.

Design Decision – A documented decision to use alternative highway design elements in place of applicable design guidance. Documented alternative decisions to the applicable highway design guidance are documented and retained in project files.

New Construction – A new transportation facility that did not previously exist along a highway segment. The addition of appurtenances to an existing facility, such as striping, signs, signals, noise barriers, etc. is not considered new construction.

Preventive Maintenance – Roadway activities that include but are not limited to joint and shoulder rehabilitation, heater re-mix, seal coats, corrective grinding of Portland Cement Concrete (PCC) pavement, and restoration of drainage systems.

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

Resurfacing, Restoration, or Rehabilitation (3R) Work – Work which 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.

The 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 where reasonable. However, the work may include selective improvements to highway geometry and other roadway features, including safety appurtenances, and still be considered 3R work.

Construction Contract Specifications – The directions, provisions, and requirements contained in the contract documents for a specific construction project. Included are various proposal conditions, contract administration provisions, required construction methods, and technical requirements for materials.

Standard Specifications – A published document that contains commonly used construction contract specifications developed for use as a reference for construction contract documents.

Note: In this manual, current Caltrans Standard Specifications is understood to mean Caltrans Standard Specifications inclusive of all current revisions, amendments, and standard special provisions, unless otherwise stated.

Standard Plans – A collection of plan details developed for use as a reference for construction contract documents. Included are standard abbreviations, symbols, design notes, design

conditions and data, construction details, specifications, layouts, and measurement and payment details.

11.2 Design Guidance for Local Assistance Projects

New and Reconstruction Projects

Title 23 of the Code of Federal Regulations (CFR) part 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.

Projects on the State Highway System (SHS)

Local agency 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)

Local agency 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) A Policy on Geometric Design of Highways and Streets.

Projects not on the NHS

Local agency 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 American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets.

Local agency developed design standards may be used on local agency 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 local agency'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 resurfacing, restoration, and rehabilitation (3R) projects on the NHS other than freeways shall be the procedures and the design or design criteria established for individual projects, groups of projects, or all non-freeway 3R projects in a state, and as approved by the FHWA. Below are the standards approved by FHWA.

Projects on the SHS

Local agency 3R projects on the SHS must be designed in accordance with the geometric standards and guidance provided by Caltrans Design Information Bulletin 79-03 (DIB-79).

Projects not on the SHS

Local agency 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 local agency 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 bridge and other structures is provided in Exhibit 11-B: Bridges and Structures.

11.3 Standard Plans

For all local agency projects on the SHS, the Caltrans Standard Plans must be used.

The following standard plans are acceptable for use on local agency 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.
- Local agency developed standard plans

Local agency developed standard plans may be used on local agency 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 local agency'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 local agency projects on the SHS, the current Caltrans Standard Specifications must be used.

The following standard specifications are acceptable for use on local agency projects not on the SHS:

- Current Caltrans Standard Specifications
- Current edition of the Standard Specifications for Public Works Construction, developed by the Public Works Standards, Inc.
- Local agency developed standard specifications

Local agency developed standard specifications may be used on local agency new or reconstruction projects not on the NHS if:

- The standards 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 local agency'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 a context-sensitive approaches which considers 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. Local agencies must evaluate, approve, and document design decisions.

Projects on the SHS

Local agency 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 the current edition of Caltrans DIB-82, Pedestrian Accessibility Guidelines for Highway Projects.

Projects not on the SHS

For local agency 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 local agency 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 engineer's seal, approved by 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 local agencies 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

Local agency 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 local agency 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 local agency 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. Local agencies 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

Local agencies 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 Caltrans Local Assistance NEPA Assignment and Environmental Compliance website.

Bicycle and Pedestrian Facilities

Local agencies 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 Bikeway 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 shall 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 shall be considered maintenance because they do not significantly affect the public's access to or usability of the road.

The following types of treatments shall be considered maintenance:

- Crack Filling and Sealing
- Surface Sealing
- Chip Seals
- Slurry Seals
- Fog Seals
- Scrub Sealingexhibit
- 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: http://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, local agency 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). Local agency plans and specifications of pedestrian facilities within the state highway rights 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 this website: http://www.dgs.ca.gov/dsa/AboutUs/contact.aspx.

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. The websites include ADA design standards and a design guide. The websites are respectively located at: http://www.ada.gov/ and http://www.access-board.gov/guidelines-and-standards.

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 see 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 shall be placed upon a street or highway. (b) Any traffic signal controller that is newly installed or upgraded by the Department of Transportation shall 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 local agencies to continue taking the action formerly mandated by this section. However nothing in this subdivision may be construed to impose any liability on a local agency 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: http://www.walkinginfo.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://bookstore.transportation.org/category_item.aspx?id=DS&gclid=CLTK3eXey8MCFUeEfgodu3UAPQ

Drainage Manual
https://bookstore.transportation.org/item_details.aspx?ID=2153

Guide for Achieving Flexibility in Highway Design
https://bookstore.transportation.org/collection_detail.aspx?ID=31

Guide for the Development of Bicycle Facilities
https://bookstore.transportation.org/collection_detail.aspx?ID=116

Guide for the Planning, Design and Operation of Pedestrian Facilities
https://bookstore.transportation.org/collection_detail.aspx?ID=131

Highway Drainage Guidelines
https://bookstore.transportation.org/collection_detail.aspx?ID=102

Roadside Design Guide
https://bookstore.transportation.org/collection_detail.aspx?ID=105

Caltrans

California Manual on Uniform Traffic Control Devices (CA MUTCD)
https://dot.ca.gov/programs/traffic-operations/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

Deputy Directive 64-R2, Complete Streets - Integrating the Transportation System
https://dot.ca.gov/programs/transportation-planning

Design Information Bulletin 79-03 (DIB-79) - Design Guidance and Standards for Roadway Rehabilitation Projects, current edition
https://dot.ca.gov/programs/design/design-information-bulletins-dibs/dib-79-03-table-of-contents

Flexible Pavement Structural Section Guide for California Cities and Counties
https://dot.ca.gov/programs/maintenance

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/-/media/dot-media/programs/design/documents/main-street-3rd-edition-a11y.pdf

NEPA Assignment and Environmental Compliance website
https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/local-environmental-issues

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

Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way, US Access Board
http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines

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/product/2012-standard-plans-for-public-works-construction

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/product/2015-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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Exhibits

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https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 12-B: Bidder's List of Subcontractors (DBE and Non-DBE)
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Exhibit 12-E: PS&E Checklist Instructions
Exhibit 12-F: Cost-Effectiveness/Public Interest Finding
Exhibit 12-G: Required Federal-Aid Contract Language
Exhibit 12-H: Sample Bid

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 agency must also comply.

The preparation of the PS&E for local federal-aid projects off the SHS is the responsibility of the local agency. Local agencies 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 local agency compliance. The local agency'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. Local agencies' PS&Es are reviewed on a periodic basis as part of the Caltrans process review program.

Federal-aid projects in which the total project costs are expected to be $100 million or more, require that an annual Financial Plan 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 are required for projects of $500 million or more. Major federal-aid projects of $500 million or more require that a draft Project Management Plan be prepared and submitted to Caltrans/Federal Highway Administration (FHWA) prior to the environmental determination. FHWA also requires that a Cost Estimate Review be performed prior to National Environmental Policy Action (NEPA) completion and prior to construction authorization. The Final Project Management Plan must be submitted within 90 days after the environmental determination. For more information see LAPM Chapter 2: Roles and Responsibilities.

For locally administered projects on the SHS, the local agency 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).

Definitions

Controlling Criteria – The specific minimum criteria and controls contained in the design standards for highway projects that are considered of primary importance for safety. Deviations from these controlling criteria require design decision approval (see LAPM Chapter 11: Design Guidance).

Cost-Effectiveness/Public Interest Finding – A written document outlining the basis for a proposed deviation from a standard procedure as required in Title 23 of the Code of Federal Regulations (CFR). The finding contains supporting documentation such as cost/ benefit analysis, product compatibility, etc., and includes reasons that the proposed deviation is considered to be cost-effective or for the public's best interest. Exhibit 12-F: Cost-Effectiveness/Public Interest Finding is a preprinted blank form that should be used by local agencies to prepare a Cost-Effectiveness/Public Interest Finding. Caltrans and FHWA approval is required for local agency projects that are Projects of Division Interest (PoDI) .

Design Decision Approval – A process to justify, approve and document deviations from established standards.

Design Standards – The established standards, specifications, procedures, guides and references listed herein that are acceptable for application in the geometric and structural design of federal-aid projects (see LAPM Chapter 11: Design Guidance).

Final Design – The phase of the transportation project development process that occurs after environmental approval that involves the preparation of detailed working drawings, as well as specifications and estimates for approved transportation projects.

Project – A portion of a highway or local road that a local agency proposes to construct, reconstruct or improve as described in the Federal State Transportation Improvement Program (FSTIP) and Regional Transportation Improvement Program (RTIP). A project may consist of several contracts or phases over several years.

Specifications – The directions, provisions, and requirements contained in the contract documents for a specific construction project. Included are various proposal conditions, contract administration provisions, required construction methods, and technical requirements for materials.

Standard Plans – A collection of plan details developed for use as a reference for construction contract documents. Included are standard abbreviations, symbols, design notes, design conditions and data, construction details, specifications, layouts, and measurement and payment details.

Standard Specifications – A published document that contains commonly used specifications developed for use as a reference for construction contract documents.

Value Engineering Analysis – 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.

12.2 PS&E Procedures for Significant NHS Projects

For significant projects (as defined in LAPM Chapter 7: Field Review, Section 7.2: Type and Requirement for Field Review) on the NHS, the local agency'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 for assistance with the review of the local agency procedures.

12.3 ENVIRONMENTAL PROCEDURES

The Code of Federal Regulations, Title 23 (Highways), Part 771.113 (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.

Compliance with Environmental Laws

The local agency 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.

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.

Final Design

Local agencies 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 local agency and a copy of the approved environmental determination or documents.

Local agencies 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.

Permits

The local agency 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.

Local agencies 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.

Documentation

Well documented records, referencing the page numbers and/or plan sheets on which commitments are illustrated, should be maintained by the local agency, as this information will be necessary when certifying the PS&E. This information will also be useful during process reviews.

12.4 METHOD OF CONSTRUCTION

Contracting Method

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 (23CFR 635.104). In addition, local agencies 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. Noncompetitive 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 methods of procurement

The use of a non-competitive contracting method must be thoroughly justified in writing (generally by the use of a Public Interest Finding), submitted to the Caltrans DLAE for approval, documented in the project files, and retained for future reference. For local federal-aid projects that are PoDI (see LAPM Chapter 2: Roles and Responsibilities), justification must be submitted to the DLAE for FHWA's review and approval.

Force Account (Day Labor)

Federal regulations (23 CFR 635.203) defines force account as the direct performance of construction work by a local agency, 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 local agency 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 fully justifying the use of force account work on a local federal-aid project must be prepared by the local agency. 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 local agency forces to perform the work and certifying that the documentation reflects the true and current estimates of costs to perform the work.

The cost estimates for competitive bidding may be based on unit prices, including any engineering and administrative costs necessary to prepare, monitor, and close-out the project. Unit prices must be based on the estimated actual cost of performing the work, but shall not exceed unit prices currently being obtained by competitive bidding on comparable construction work in the same general locality.

Incidental force account work must be carefully incorporated into a project's PS&E package. The local agency must keep precise project records documenting: the date(s) of authorization, actual work performed, date of performance, and costs for personnel, materials and equipment. Documentation of costs should include:

- PERSONNEL
  - Time sheets
  - Salaries and payrolls
  - Foreman's reports
- MATERIALS
  - Invoices for materials and supplies, and for any special services
  - Cost of producing materials supplied by the local agency
- EQUIPMENT
  - Time and cost for using equipment owned by the local agency
  - Time and rates for using rented equipment

Project records must be kept at least three years after the federal government completes a final voucher of the project.

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 shall be approved by the DLAE. An emergency is a situation that requires emergency repair work, as provided under the Emergency Relief Program (see Local Assistance 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: A local agency 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 local agency completes the design of the bridge, such that repairing the bridge is not practical. At this point, for projects that are exempt from FHWA oversight, the local agency can contact their DLAE to be granted a waiver (Authorization to Proceed), so as 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

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; and (2) all federal-aid bridge projects on the NHS with a total estimated project cost of $40 million or more. Design/Build projects are excluded. 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 local agency administering the project has been delegated the responsibility to ensure that VA is performed under Caltrans delegation authority. For each project, the local agency shall indicate in the appropriate checkbox on Exhibit 12-D: PS&E Checklist whether VA was performed.

Procedures

The multi-disciplined team can be qualified local agency 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 shall 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 so as to accomplish the original purpose of the project

For bridge projects, the multi-disciplined team shall 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 shall be submitted by the local agency 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 be used. The DVAC may be consulted for applicable sections.

12.6 Plans

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 Plans Preparation Manual as a guide for preparing contract plans.

Design Guidance

Guidance for the design of federal-aid highway projects is contained in LAPM Chapter 11: Design Guidance.

Design Decisions

The Public Works Director, or the person to whom approval authority has been delegated, shall 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.

Plan Sheet and Specification Signatures

On local agency 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 a local agency consultant, the title sheets shall also be signed by a full-time employee of the local agency who is responsible for the project. Additional local agency signatures on the title sheet are optional. Plans and specifications for projects advertised, awarded and administered by the local agency 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 local agency to prepare the plans.

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 shall 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 shall meet statewide geometric standards.

Bridge construction details included in local standard plans shall meet Caltrans' bridge design standards. When a local agency requests structure-review assistance from Caltrans, the Caltrans Standard Plans must be used, as appropriate, for the structure portion of the project.

Erosion Control Plans

Erosion control measures and practices shall 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 shall be placed on erosion control in the preparation of PS&E. All reasonable steps shall 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 shall not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

Work Zone Safety and Mobility

Local Agency Policy

23 CFR Part 630-Subpart J Work Zone and Safety and Mobility requires the implementation of a policy by the local agency 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 local agency 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 the Deputy Directive-60 Transportation Management Plans, which is available from the DLAE. The local agency's policy can be as simple as providing a smooth and efficient flow of traffic, while retaining safety through the roadway work zone.

Local agencies are encouraged to implement this policy for their nonfederal-aid projects as well. More information on Work Zone Safety and Mobility is provided on the internet at:

http://www.ops.fhwa.dot.gov/wz/resources/final_rule.htm. FHWA's Local and Rural Safety Program can be found at: http://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.

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 local agency's work zone policy, and an understanding of the expected work zone impacts of the project. For significant projects, the local agency shall 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 local agency to have less significant work zone impacts. If additional information is needed by the local agency, the DLAE may refer the local agency to the Transportation Management Plan Guidelines and may obtain additional information from the Caltrans headquarters TMP Coordinator in the Division of Traffic Operations.

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 shall be consistent with the provisions under Part 6 of the California Manual on Uniform Traffic Control Device (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. You can purchase this guidebook at AASHTO Publications website.

In developing and implementing the TTC Plan, the pre-existing roadside safety hardware shall 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 local agency for that project. The TTC Plan shall be either referenced to specific TTC elements in the MUTCD, or be designed specifically for the project.

Transportation Operations (TO)

The Transportation Operations (TO) shall 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 local agency.

Public Information

The Public Information (PI) shall 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 shall be determined by the project characteristic, public information, and outreach strategies identified by the local agency. 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.

Local agencies 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 shall include either a TMP or provisions for contractors to develop a TMP at the most appropriate project phase that will be applicable to the local agency's chosen contracting methodology for the project. A contractor-developed TMP shall be subject to the approval of the local agency and shall not be implemented before it is approved.

The PS&E shall 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 local agency and the contractor shall 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

Work Zone Implementation and Improvement Procedures

Work Zone Assessment and Management Procedures

A local agency shall 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 shall be based on the project characteristics.

Work Zone Data

A local agency shall use field observations, available work zone crash data and operational information to manage work zone impacts for specific projects during the implementation. A local agency shall 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. A local agency shall maintain elements of the data and information resources that are necessary to support these activities.

Training

A local agency shall 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. A local agency shall 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 local agency level and/or review of randomly selected projects throughout the local agency'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.

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. Title 28 Code of Federal Regulations (CFR) Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services or Title 28 CFR Part 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 shall 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 shall 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 (nonstructural), 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.

Acceptable Standard Specifications and Special Provision

The local agency 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 shall apply.

- Bridge construction methods and materials specifications included in local standard specifications shall meet the bridge requirements of the Caltrans' Bridge Design Specifications.

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 local agencies. 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 FHWA1273 and other required federal contract provisions) are available from the Caltrans Office Engineer at: http://ppmoe.dot.ca.gov/des/oe/. For local agency projects to be advertised, awarded and administered by Caltrans, Caltrans boilerplate specifications are inserted by Caltrans.

12.8 Federal Contract Requirements

Required Federal Contract Language

Exhibit 12-G is available to assist local agencies 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.

Disadvantaged Business Enterprise (DBE)

Individual DBE contract goals will be established. Complete evaluation documentation is required and shall 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 shall be documented and verified (see Exhibit 15-H: DBE Information-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 shall contain special provisions stating that it is the local agency's policy to comply with Part 26 of Title 49, Code of Federal Regulations (CFR) and specify the contractor's obligation under these regulations. In accordance with LAPM Chapter 9, Section 9.6: Local Agency Responsibilities under Caltrans DBE Program Plan, each local agency is required to create and maintain a bidders list containing information about all DBE and non-DBE firms that bid or quote on the local agency'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 local agencies may choose to use in their solicitations to compile a bidders list.

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 shall be specified in the bidding documents and shall 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 local agency and contractor. In addition, delays and inconvenience to the public may be unnecessarily extended.

Caltrans will periodically perform a process review of local agency procedures for determining contract time to assess whether the resulting contract times are appropriate. There are several different techniques used to determine contract time. The 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 local agency 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 contacting should be discussed with the DLAE prior to use. The FHWA Technical Advisory 5080.10, Incentive/Disincentive for Early Completion describes this technique in detail, and is available in the appendix of FHWA Contract Administration Core Curriculum.

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 a local agency chooses to use a different standard specifications book, the federal regulations shall still apply.

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

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 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 local agencies 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.

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 shall 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 shall 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.

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 a local agency 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. In all cases, calculations should support the recommended rate.

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.

Local agencies should use the following formula to avoid excessive, or unreasonable, liquidated damages:

(L% from table below) x (Engr. Estimate + RE Office Expense *) = Liq. Dam./calendar day
WORKING DAYS **

* Resident Engineer office expenses for the life of the contract should be added unless the cost is already included in the Engineer's Estimate.

** Working days used to calculate liquidated damages should not include water pollution establishment or plant establishment days.

Table 12-1: Liquidated Damages Table (L%)

Project Type						
Project Estimate	**Resurfacing*/ Rehab**	**New Highway**	**Realignment / Widening**	**Landscaping**	**Sound Wall**	**Others**
Over $30 million	10%	10%	13%	15%	15%	15%
$10 million to $30 million	10%	12%	15%	15%	15%	15%
$5 million to $10 million	10%	15%	15%	15%	15%	15%
$750k to $5 million	15%	15%	15%	18%	18%	15%
Less than $750k	15%	20%	20%	18%	20%	15%
*** Resurfacing projects include asphalt concrete (AC) surfacing, seal coats, slurry seals, etc.**						

The calculated liquidated damages should be rounded up in $100 increments to determine the amount to be specified.

If the local agency 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. The local agency should have a liquidated damage calculation in the project files.

Buy America

On all federal-aid construction projects, current regulations require that steel and iron used be made in the United States if federal dollars are used during any phase of the project (such as design, environmental, right-of-way or construction). The Buy America provision applies to all foreign steel and iron materials regardless of the percentage of steel in the manufactured product. All manufacturing processes involved in steel or iron products must occur within the United States. These processes include rolling, extruding, machining, bending, grinding, drilling, coating, welding and smelting. Domestically produced steel billets or iron ingots shipped overseas for any process and returned to the United States do not conform to this requirement.

Buy America provisions do not apply to:

- Minimal use of all foreign material in which the total delivery cost to the project site is less than $2500 or 0.1 percent of the contract amount, whichever is greater.
- Raw materials, scrap temporary steel items such as sheet pilings, bridges, steel scaffolding and false work.
- Materials that remain in place at the contractor's convenience such as sheet pilings and forms.
- Pig iron manufactured outside the United States.

A local agency shall not list an ineligible iron or steel product as nonparticipating in order to circumvent the Buy America requirements.

A waiver of the Buy America requirement by FHWA may be granted for specific projects, specific products, specific geographical areas, or combinations if:

- Buy America is inconsistent with the public interest, or
- There is not a sufficient supply of domestic materials of satisfactory quality.

Approval authority for waiver of Buy America requirements has not been delegated from the FHWA to Caltrans and therefore is not delegated to the local agencies. The local agency should plan for a Buy America waiver request to take at least six months. Additionally, local agencies 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.

Form FHWA 1273

The May 1, 2012 revision of Form FHWA 1273 (included in Exhibit 12-G: Required Federal-Aid Contract Language) 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 would include:

- Referencing the 1273 and wage rates in the main body of the contract and label, such as "FHWA Form 1273 – Required Contract Provisions Federal-Aid Construction Contracts, Appendix B"
- Placing headings on the FHWA Form 1273 and wage rates as referenced in the main body of the contract, such as "Appendix B"
- Continuous page numbering on all pages including Form 1273 and wage rates
- Contract number on all pages including Form 1273 and wage rates

FHWA does not consider placing the FHWA Form 1273 and wage rates in the special provisions or standards specifications to be directly incorporated into the contract. Additionally, while a link to the wage rate determination can be used in the original advertisement, it cannot be used in the final contract."

Failure of the local agency to incorporate the Form FHWA 1273 in the executed contract is considered an unrecoverable project deficiency and shall make the construction phase of the project ineligible for federal reimbursement (see LAPM Chapter 20: Deficiencies and Sanctions). The prime contractor is responsible for compliance with the requirements by all subcontractors and lower tier subcontractors. Failure of the prime contractor to comply with this requirement is grounds for local agency 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.

Use of Local Hiring Preference

The local agency shall not include contract provisions that require preferences to hire locally on any federal-aid contract. The contract provisions included in Form FHWA 1273 also require that the contractor not discriminate against labor from any other State. Any contract that includes provisions that require a contractor to give any preference in hiring (with the exception of Native Americans living on or near a reservation on eligible projects) shall make the contract ineligible for federal reimbursement (see LAPM Chapter 20: Deficiencies and Sanctions).

Nondiscrimination

The provisions of this section related to 23 CFR Part 230 are applicable to Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 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 sub-contractor are required to report annually, on the composition of their workforce by race, gender, and job category who perform work during the last payroll period of July, using Form PR-1391 Federal-aid Highway Construction Contractors Annual EEO Report to the local agency. The local agency shall forward completed Form PR-1391's (see Exhibit 16-O) to the Caltrans District Local Assistance Engineer.

Cargo Preference Act Requirements

Local agencies must insert a contract clause referencing and requiring compliance with the requirements of the Cargo Preference Act of 1954 and the implementing regulations in 46 CFR 381 into all federally funded construction contracts. Until relevant provisions are added to Form FHWA 1273, the Use of United States – flag vessels clause provided in Exhibit 12-G must be included (either directly or by reference) in federally funded construction contracts.

Federal Trainee Program

On selected federal-aid highway construction projects, Federal Trainee Program or On-the-Job Training (OJT) special provisions (Item 15 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 local agency must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program.
- The local agency 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 local agency 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. There are no apprentice teamsters or laborers. 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 Supplemental Funds of the Engineer's Estimate.

Federal Wage Rates Determinations

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 USC 113. The federal prevailing wage rates must be physically inserted or referenced by an internet website address in the project special provisions and must be physically attached to the project's final contract agreement package signed by the local agency and contractor on all federal-aid highway construction projects exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempted.

The federal prevailing wage rates are available directly from the Department of Labor Home Page under http://www.wdol.gov.

For contracts entered pursuant to competitive bidding procedures, local agencies must be in conformance with the **federal 10-day rule**. Local agencies must monitor the minimum federal wage rate determinations posted under http://www.wdol.gov to determine if project's applicable 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, local agencies are required to issue an addendum to incorporate the modified version of the federal prevailing wage rates to the contract.

It is important to ensure the project's applicable federal prevailing wage rates physically be attached as an exhibit to the final contract agreement package prior to its execution by the contractor and local agency. The same provision set forth applies to the contractor's subcontracted works as well.

Relations with Railroad

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local agency and the railroad company.

FHWA approval of railroad agreements is required for nonexempt projects. A copy of the conformed agreement shall 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.

Sample Bid

Exhibit 12-H: Sample Bid is available to assist the local agency 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 Agency DBE information, Federal Wage Rates, and Disclosure of Lobbying Activities.

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 USC 140(a)) and implementing regulations at 23 CFR 230, require that the local agency 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 in Exhibit 12-G: Required Federal-aid Contract Language 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 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 this Website: 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 X of Form FHWA-1273 in Exhibit 12-G: Required Federal-aid Contract Language.

12.9 Restricted Contract Provisions

Indian Preference

Local agencies may not use local hiring practices on federal-aid construction projects with one exception: 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 shall 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 shall 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 shall not apply to that portion. On and Off reservation portions of the project should be clearly indicated in order to avoid over-payment.

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 local agency may accept a bid.

The procedures and requirements a STD proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

The FHWA does not require implementation of procedures or requirements for prequalification, bonding, or licensing on federal-aid projects.

However, if the local agency has such procedures or requirements, they must conform to the FHWA's competitive bidding policy as follows:

- No procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall 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 shall be required to obtain a license before the submission of a bid or before the bid may be considered for award of a contract.

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.

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. Local agencies may request the use of PLAs on projects totaling less than $25 million if the project would otherwise comply with this guidance. The 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 an agency would like to use 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 prior to construction authorization. The use of a PLA may be approved if the local agency 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, a local agency may consider many factors.

Those factors include, but are 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 a local agency 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 online at the following Website: http://www.whitehouse.gov/the-press-office/executive-order-use-project-labor-agreements-federal-construction-projects.

12.10 Optional Contract Provisions

Additive or Deductive Bid Items

Local agencies 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.

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 discussion of factors to consider when selecting and developing I/D projects is available in FHWA's Contract Administration Core Curriculum (2006) at the following website: www.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: 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.

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 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 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 are provided in FHWA's Contract Administration Core Curriculum.

Alternative Contracting Practices

Neither the FHWA nor Caltrans have any intention of mandating the use of any of the alternative 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 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 the FHWA's Contract Administration Core Curriculum (https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf). 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: https://dot.ca.gov/programs/design/design-memoranda.

12.11 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 Cost-Effectiveness Determination (see Exhibit 12-F: Cost-Effectiveness/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.

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 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.

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 nonfederal projects.

For projects on the NHS, local agencies may include warranty provisions 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.
- No warranty requirements shall be approved which may place an undue obligation on the contractor for items over which the contractor has no control.

The local agency shall provide documentation of these conditions in the project files. Local agencies 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.

Proprietary Items

The use of proprietary products and processes on federal-aid projects is restricted. When less than three proprietary (brand name) products or processes are called out in the project plans or special provisions, a Public Interest Finding (including Certification as applicable) must be completed, approved and emailed to Proprietary.PIF@dot.ca.gov.

It is the policy of the FHWA not to participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a federal-aid project unless:

- The item is purchased or obtained through competitive bidding with equally suitable unpatented items using a minimum of three bids.
- The local agency certifies in a Public Interest Finding (PIF) that the proprietary or patented item is essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or
- The item is used for research or for a special type of construction on relatively short sections of road for experimental purposes.

This FHWA policy is applicable to local agency projects both on and off the NHS.

The primary purpose of this policy is to estimate competition in the selection of materials and development of new materials and products, and to ensure FHWA participation in the costs of such proprietary items as specified in the project documents and special provisions. As such, specifications should be written to allow bidders the maximum flexibility to select materials and products to meet construction specifications and result in the lowest bid prices.

The policy further permits:

- Materials and products that are judged equal may be bid under generic specifications. If only patented or proprietary products are acceptable, they shall be bid as alternatives with all, or at least a reasonable number, of acceptable materials or products listed.
- The local agency may approve a single source if it can be found that its utilization is in the public interest. The approved PIF, including certification as applicable shall be fully documented and retained in the project files.

Trade names (3M, Corten, etc.) are generally the key to identifying patented or proprietary materials. Generally, products should not be identified by their brand or trade name unless a reasonable number of these materials or products are listed. The FHWA considers three to be a reasonable number. The licensing of several suppliers to produce a product does not change the fact that it is a single product and should not be specified to the exclusion of other equally suitable products. Proprietary items must be clearly identified on Exhibit 12-D: PS&E Checklist. Failure to do so may render the purchasing, furnishing, and installation of such items as non-participating.

Public Interest Finding

For any instance when less than three proprietary (brand name) products or processes are called out in the project plans or special provisions, the local agency must prepare a PIF to adequately document and justify the specification of such products. PIFs are specific to each federal-aid project in order to properly assess changes in market conditions and re-examine the

need to specify a proprietary product. This will encourage re-evaluation of the continued need for a specific product in light of changes in the agency's performance objectives, product availability, technological improvements, product lifecycle, and market conditions. The terms or equal or the term or approved equal, do not relieve the agency from preparing a PIF for each such proprietary product as specified in the project. The PIF must define objective and testable criteria for determining what will be considered equal. These criteria must be based upon documented needs. Vendor-created descriptions or specifications are not acceptable and are likely to be protested by competitors.

The local agency must email the approved PIF to Proprietary.PIF@dot.ca.gov, and retain the originals in the project files. If the project is on the State Highway System, a copy of the approved PIF must also be provided to the Caltrans Project Manager.

Certification

The Certification portion of the Exhibit 12-F: Cost-Effectiveness/Public Interest Finding is required for each product specified in the project if no such equally suitable alternate exists or if such a patented or proprietary item is essential for synchronization with existing highway facilities.

The local agency must email the completed Certification along with the approved PIF to Proprietary.PIF@dot.ca.gov, and retain the originals in the project files. If the project is on the State Highway System, a copy of the Certification along with the approved PIF must also be provided to the Caltrans Project Manager.

Functions and specifications of electronic devices change frequently, and new or revised equipment appears very often. As a result, certifications for electronic components must be based on testing the compatibility of new products with existing infrastructure.

Synchronization is defined by FHWA as providing a product that matches specific current or desired characteristics of a project. Synchronization may be based on:

- Function (the proprietary product is necessary for the satisfactory operation of the existing facility),
- Aesthetics (the proprietary product is necessary to match the visual appearance of existing facilities), or
- Logistics (the proprietary product is interchangeable with products in an agency's maintenance inventory), or any combination thereof.

Additional considerations for synchronization could be:

Lifecycle (the relative age of existing systems that will be expanded and the remaining projected life of the proposed proprietary element in relation to the remaining life of the existing elements). Size/extent of products and systems to be synchronized to/with, and the relative cost of the proprietary elements compared with replacing the elements requiring synchronization. As guidance, if the project expands the existing inventory by less than 30% in the number of units, this would be deemed approvable in terms of the size and extent. An increase of greater than 100% (a doubling of the existing inventory) would typically not be deemed approvable. An increase between 30% and 100% of the existing inventory may be approvable only if supported by a cost analysis comparing the expansion of the existing inventory vs. the replace inventory scenarios.

Other Proprietary Item Considerations

- The existence of a proprietary product/process on an FHWA or Caltrans qualified or approved product list does not grant sole source approval.
- This policy is also applicable to non-physical products (software, mobile apps, etc.).
- The PIF Certification must specify a sunset date whereby the continued use of the proprietary product is based on appropriate testing and evaluation of the current and ongoing marketplace of available products.
- The use of the terms "or equal" and "or approved equal" clause in the project plans and specifications is discouraged, as it can often result in misunderstandings and subsequent contractor claims in construction, and does not meet FHWA requirements. If product substitution requests are considered, the specifications must be very clear regarding the specific functional, operational, and maintenance characteristics of the product.
- In the absence of specifying a particular product or brand name, a product should not be so narrowly specified that the effective result is to essentially limit the use to that particular product or brand name.
- This FHWA policy is applicable to local agency projects both on and off the NHS.
- Regulations on the use of patented or proprietary products on federal-aid projects are included in the Code of Federal Regulations (23 CFR 635.411 Material or Product Selection) and FHWA policy found at: www.fhwa.dot.gov/programadmin/contracts/011106qa.cfm#_Hlk307506586 and https://www.fhwa.dot.gov/construction/cqit/propriet.cfm.

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, the FHWA permits the local agencies to specify in their construction contract specifications the use of predetermined rate guides as well as equipment rate schedules developed by the local agency which are in conformance with the federal cost principles and the FHWA's policy contained in the Contract Administration Core Curriculum, published by the 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 shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the local agency and FHWA and to permit an effective review and comparison of the bids received. Initially, a preliminary estimate is prepared by the local agency, which includes the basic items that a contractor will be asked to bid. This is a confidential document, which represents the local agency'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 local agency furnished materials, supplemental work, construction engineering, the Federal Trainee program, and force

account (day labor) work performed by the local agency. The estimates must be segregated by major construction categories. 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 local agency, 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.

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

The above work must also be identified and segregated for the purposes of the preliminary and detail estimates. Quantities for each structure shall be shown separately with an appropriate structure code. Miscellaneous work, such as utility adjustments by a utility company, shall also be separate.

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 local agency with or without the item code number. The contract item list should be used if the local agency is using Caltrans Standard Specifications as the item descriptions are matched with the specifications.

Local Agency Furnished Materials

Local agency furnished materials are a part of the total cost of the project and should be subtotaled and included in the total project cost.

To be eligible for federal participation, any material (other than local natural material) purchased by the local agency 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, approved by the local agency and submitted to the DLAE for review that justifies the use of another method of acquisition. The unit cost eligible for federal participation is limited to the unit cost of such material to the local agency.

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 Section 7: Preparing Cost Estimate in the Construction Contract Development Guide.

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.

Construction Engineering

The 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 local agencies continue to use 15% as a guide for estimating CE costs and maintain justification for higher CE costs, except for projects funded from federal programs under direct Caltrans management (i.e., those programs for which Caltrans selects and programs the projects). For projects selected and programmed directly by Caltrans, CE costs in excess of fifteen percent will continue to need justification by local agencies and approval by the DLAEs.

Federal Trainee Program

Estimates for federal-aid projects may include an estimated amount for the Federal Trainee Program. It is up to the local agency 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.

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).

Optional Bridge Review

When a bridge or major structure is involved, the local agency may request a cursory review of the structural designs by Caltrans Division of 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 local agency staff
- Complexity of project, type of structure

If the local agency requests a cursory review, they must submit checked plans to Caltrans Division of Structures. The checker's signature or initials must appear on each sheet of the structure plans. Unsigned plans will be returned to the local agency. The project special provisions and engineering reports must have the engineer's stamp, signature and registration number on the title sheet.

For major Federal-aid construction projects on the NHS, involving a bridge or major structure, the bridge review shall 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 Division of Structures for review, the local agency must identify the following:

- Agency advertising the project
- Estimated advertising date
- Type of funding
- Expenditure authorization number on State-advertised projects

When structure design documents are to be reviewed by Caltrans, the following numbers of copies, as appropriate, are to be submitted to the Division of Structures.

These figures represent the minimum number of copies required:

Document Submitted	Number Required
Plans (reduced or full-size prints)	3
Special provisions (for bridge portion)	3
Hydraulic report	2
Foundation report	2

12.13 PS&E CERTIFICATION

LAPM 3-A: Project Authorization/Adjustment Request must be signed by the engineer responsible for the project (who must be either a local agency employee or a consultant retained by the local agency and a professional civil engineer registered to practice in California).

In the certification, the local agency certifies that the PS&E has been prepared in accordance with the Local Assistance Procedures Manual 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 local agency accepts responsibility for compliance with applicable design standards, Title 23 of the United States Code, and other applicable federal requirements (DBE, EEO, federal and state wage rates, license requirements, etc.). Failure to comply with any of these requirements may cause withdrawal of funds.

PS&E Checklist

Local agencies will complete Exhibit 12-D: PS&E Checklist and attach it to all PS&E Certification Letters submitted to the DLAE. The checklist 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 are included in order to lead the local agency 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 local agency may use equivalent provisions based on other standard specifications as long as the intent of the federal requirement is met.

Checklist Review by Caltrans

The DLAEs will review each checklist to ensure that the local agency 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.

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 local agency 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. Local agencies 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 local agency to indicate the page number 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 Division of Local Assistance 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. A set of plans will also be required. As soon as the project is advertised, the local agency shall furnish the DLAE with one copy of the as advertise 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.

12.14 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 local agency shall 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 local agency.

12.15 References

The Civil Rights Act 1964
https://www.archives.gov/education/lessons/civil-rights-act/

STAA Section 165
https://en.wikipedia.org/wiki/Surface_Transportation_Assistance_Act

23 USC 106(b)(2)
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap1-sec106

23 USC 112
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap1-sec112

23 USC 113
https://www.gpo.gov/fdsys/granule/USCODE-2002-title23/USCODE-2002-title23-chap1-subchapI-sec113/content-detail.html

23 USC 114
https://www.gpo.gov/fdsys/granule/USCODE-2010-title23/USCODE-2010-title23-chap1-sec114

23 USC 140
http://www.fhwa.dot.gov/environment/environmental_justice/legislation/140.cfm

23 USC 313
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap3-sec313

23 USC 315
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap3-sec315/content-detail.html

23 USC 324
https://www.gpo.gov/fdsys/granule/USCODE-2010-title23/USCODE-2010-title23-chap3-sec324/content-detail.html

25 USC 472a
https://www.gpo.gov/fdsys/pkg/USCODE-2011-title25/html/USCODE-2011-title25-chap14-subchapV.htm

40 USC 276 (a) Davis-Bacon &(c) Copeland Act
https://www.dol.gov/oasam/regs/statutes/276a.htm

40 USC 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
http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.3.8

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

323 CFR 633
http://www.ecfr.gov/cgi-bin/text-idx?SID&node=pt23.1.633&rgn=div5

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
http://www.ecfr.gov/cgi-bin/text-idx?node=28:1.0.1.1.36

29 CFR 1,3,5
http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=29:1.1.1.1.2

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
http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=41:1.2.3.1.1

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

Chapter 13 **Right of Way**

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Exhibits

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

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

Chapter 13 **Right of Way**

13.1 GENERAL

The intent of this chapter is to provide local agencies with the basic understanding of Right of Way (R/W) procedures for locally sponsored federal-aid transportation projects. Local agencies, 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, the FHWA Project Development Guide (see Appendices A and B) and 49 of the Code of Federal Regulations (CFR), Part 24.

Note: The Uniform Act must be followed on all local agency projects even if no federal funds are used for the acquisition of R/W for the project. Although substantial responsibility for the administration of local agency 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 local agency projects to ensure that the Uniform Act requirements are being met.

In addition, local agencies 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 local agencies 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 local agency projects are performed on the SHS or any portion thereof, the local public agency 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 a local agency 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 local public agencies for use in performing their R/W work. Caltrans projects may generally be larger than many local agency projects, but the R/W processes and procedures are the same as those performed by local agencies for their projects.

Local public agencies 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 Agency Relationship

The Federal Highway Administration (FHWA) is the federal agency most typically involved in transportation projects undertaken with federal funding for the programs discussed in this 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, the FHWA is involved pursuant to these responsibilities and the delegations described below.

Caltrans is granted major delegations of authority from FHWA under 23 USC 106(c) and the FHWA/Caltrans Joint Stewardship and Oversight Agreement. Further, Caltrans has passed on these delegations to local agency 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.

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
- Execution of Project Agreements
- Approval of R/W Certification Level 3/3W for projects on the National Highway System, pursuant to the current Stewardship and Oversight Agreement (SOA) or specific Project Oversight Agreement (POA).
- Approval of R/W Certification Level 3/3W for all interstate projects, pursuant to the current Stewardship and Oversight Agreement (SOA) or specific Project Oversight Agreement (POA)
- Approval of R/W certifications where the Project Agreement states FHWA retains approval authority.

For additional details on the FHWA/Caltrans relationship, refer to LAPM Chapter 2: Roles and Responsibilities.

Caltrans Role

When federal funding is used in any phase of a local assistance project, the 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 local agencies. 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 local agencies of their responsibilities accompanying federal-aid transportation projects by ensuring that every local agency 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 local agency. Refer to Figure 13-1, Right of Way Procedures Flowchart, in this chapter which gives an excellent overview of the R/W process.

Caltrans District Roles

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 local agency in that district. In addition, each district has an R/W Local Programs Coordinator who is responsible for working with each local agency whose projects involve federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans R/W is required to monitor local agency's procedures for R/W appraisal, acquisition, relocation assistance, property management, 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 will monitor R/W activities at any time during the project. Normally, however, most monitoring is performed on a post-audit, spot-check basis 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. Spot-check monitoring will normally be limited to no more than 25% of the total work performed. Additional reviews shall 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 shall bring all violations discovered to the attention of the local agency. It is the local agency's responsibility to ensure correction. The selection of projects that will be monitored shall be at the discretion of the district based on staff availability, familiarity with the local agency, 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. Both entry and exit conferences will be conducted to advise local agency staff of the scope and findings of the monitoring visit. A written

report will usually be provided to the local agency, though not necessarily at the time of the exit conference.

Monitoring Findings

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.

Violations of What Caltrans Considers to Be Good Business Practice

These are practices of the local agency 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. Local agencies will be advised of these observations, but there is no penalty associated with noncompliance. Local agencies are free to adopt suggested changes or not as their management judgment indicates.

Violations of Practices Where Correction is Mandatory

Local agencies 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. Local agencies will be advised in writing of such violations and of the corrective actions to be taken. During the time the local agency 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.

For additional details, refer to LAPM Chapter 20: Deficiencies and Sanctions.

Qualifying Local Agencies

Caltrans qualifies local agencies to perform their own R/W functions (see Qualification of Local Agencies below). Caltrans also provides training and guidance to local agencies seeking assistance on federal-aid projects.

Local Agency Role

Certification of Projects

The local agency will certify that all Uniform Act requirements have been met on federal-aid projects.

Qualification of Local Agencies

Caltrans has an agreement with FHWA that allows local agencies to be certified in advance to perform all or some R/W activities based on the local agency'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 local agency 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 local agency can begin R/W work on a federal-aid project. To become qualified, the local agency must first contact the District Right of Way Local Programs Coordinator, requesting approval of qualification status. The Coordinator

will then meet with the local agency'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 shall 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 local agency 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.

See Chapter 17: Local Programs of the Caltrans Right of Way Manual for additional information on Local Agency 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 local agency 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 (see 49 CFR 24.104 Review of Appraisals). A consultant review appraiser must have a valid general license issued by the state Office of Real Estate Appraisers (OREA). The review appraiser must determine that the appraisal meets applicable appraisal requirements and shall, 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 local agency receives a qualification status Level 1 or 2 without having the staff or means to perform the appraisal review function, the local agency shall hire either a

qualified licensed consultant (see Local Agency Selection of Consultants below), or another local agency qualified to perform the appraisal review function.

Note: Only the local agency can determine the just compensation to be paid. Another agency or consultant cannot do so.

Non-Qualified Local Agencies – Options

Local agencies that are not qualified to perform any or all of the respective R/W functions necessary for the project must either hire another local agency qualified to perform those functions, or directly hire a consultant who meets the consultant selection criteria discussed below.

Non-qualified local agencies have the following choices in hiring consultants:

- Contract with a qualified local agency
- 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 local agency 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 local agency's responsibility to verify that the consultants have the necessary certificates/licenses to perform the R/W functions needed for the local agency'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 local agencies. The selection process will be administered by the local agency 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 local agency 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 local agency 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 local agency's requirements. The local agency 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.

Local agencies are responsible and accountable for the actions of their consultants in properly executing their duties and activities in accordance with the Uniform Act. The local agency retains the ultimate responsibility for signing the R/W Certifications. Also, local agencies

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. Local agencies shall 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 local agency 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 a local agency 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 Comparison
- Lump Sum

The time-base method is appropriate for local agencies 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 local agency 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 local agency 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 local agency. 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 local agency to repay these funds.

Consultants must perform R/W functions to the same standards, practices, rules, and regulations as the local agency. 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 local agency 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. The local agency 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 local agency 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 local agency shall 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 a local agency whenever federal funds are to be used on a local transportation project. In the master agreement, a local agency 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 local agency 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, Exhibit 7-B: Field Review Form and the R/W estimate must be completed, and National Environmental Policy Act (NEPA) approval obtained before requesting authorization. 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.

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 a local agency 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 local agency 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.

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 local agency 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 local agency 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 local agency must prepare a Request for Authorization package (see Chapter 3, LAPM 3-A Project Authorization/Adjustment Request) 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 local agency 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 local agency is informed and advised what corrective actions are necessary.

Authorization to Begin Right of Way Work (E-76)

Each phase (capital/support) or function (appraisal, acquisition, or utility relocation) 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.

Local agencies 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 local agency 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 local agency 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. Each agency 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) Form 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 local agency 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 should be consulted on all FHWA Projects of Division Interest projects. All requests for FHWA participation should be coordinated through the DLAE. Local agencies 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 local agency 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.

13.6 National Environmental Policy Act

All local agency federal-aid transportation projects off the SHS must comply with the provisions of the National Environmental Policy Act (NEPA) and the implementing of regulations (*23 CFR 771*). Local agencies 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 local agency projects must demonstrate compliance with NEPA and other federal environmental laws before proceeding with R/W work or the final design of a project.

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. Question No. 24 in Exhibit 6-A and Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES) Form specifically relate to R/W impacts and a yes answer would indicate that further action is necessary.

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.

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) at: https://dot.ca.gov/programs/environmental-analysis/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.

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.

While Draft and Final EAs and EISs may identify the preferred alternative, the selected alternative shall 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.

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 local agency'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 local agency 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.

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 local agency.

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. Local agencies 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 local agency anticipates seeking reimbursement for the acquisition costs when the project is approved for federal-aid. The local agency 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.

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.

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.

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 right (both temporary and permanent) shall be appraised before the initiation of negotiations with the owner, and the acquiring agency shall establish an amount it believes to be just compensation (49 CFR 24.102). 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. 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 shall 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 Agency's continued possession of the property [49 CFR 24.102(j)].

Appraisal Review

As noted above, on federal-aid projects, a formal review of the appraisal is necessary (see 49 CFR 24.104). If the local agency 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 California Department of Real Estate (DRE) 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 local agency 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.

Appraisal Waiver Valuation

When the local agency determines that the valuation problem is uncomplicated and the market value is estimated at $10,000 or less based on a review of available data, the appraisal can be waived. In this case, the local agency will prepare a Waiver Valuation. The $10,000 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).

Separation of Appraisal and Acquisition Functions

Local agencies 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 $10,000 or less. 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 $10,000 or less and the Determination of Just Compensation (waiver of appraisal) formats shall 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.

Dual Appraisal Report

Caltrans policy no longer requires dual appraisal reports. Local agencies 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 shall 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 local agency management are responsible for maintaining the fact, spirit, and appearance of this independence.

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 local agencies 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 shall be disregarded in determining the compensation for the property. The agency shall provide the owner(s) with a written statement explaining the basis for the amount it established as just compensation or a copy of the completed appraisal.

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, in this chapter.

The general Uniform Act requirements are as follows:

- A written appraisal establishing just compensation must be approved prior to the initiation of negotiations.
- 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. [This is a Relocation Assistance Program (RAP) requirement per 49 CFR 24.203(c)].
- The owner's incidental escrow cost must be paid.
- A written (parcel) diary must be maintained.

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 local agency 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.

Permit to Enter and Construct (PTE) for Environmental or Geological Studies

Written permission from a grantor via a Permit to Enter or equivalent document to 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. Please contact your District Right of Way Local Programs Liaison for any additional guidance, if needed.

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 shall 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.

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 local agency 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

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 local agencies in connection with projects where federal funds participate in any of the R/W costs for 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. For additional details, refer to Chapter 11: Property Management of the Caltrans Right of Way Manual.

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 local agency on short notice will not be charged more than fair market rents.

Excess Lands (Acquisition and Disposal)

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. Local agencies shall use these funds for subsequent Title 23 (US Code) eligible projects. Local agencies 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).

13.10 Right of Way Certification

When a local agency performs R/W activities on a federally assisted local project, the local agency prepares the R/W Certification. The R/W Certification is necessary before a project can proceed to construction. 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 project. The R/W Certification also documents that R/W activities including the relocation of any displaced persons conducted in accordance with applicable state and federal laws and regulations.

Note: For projects requiring CTC allocation approval, see LAPG Chapter 23: Local Agency STIP Projects.

Certification Forms

A separate R/W Certification must be completed by local agencies for each local assistance project even if no R/W is required for the project. All Certifications can be prepared using forms specified by Caltrans (see Exhibits 13-A: Short Form Right of Way Certification Local Assistance Project and Exhibit 13-B: Right of Way Certification Local Assistance (Off-State Highway System)). On the R/W Certification form, the local agency should use only the portions applicable to the project being certified.

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

Local agency transportation projects often involve utility relocation. For utility relocation details refer to LAPM Chapter 14: Utility Relocation.

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 local agencies 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 local agencies in the selection of qualified consultants or in contracting with a qualified local agency to perform the respective R/W functions for them.

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 Certification 3 is upgraded to a Certification 2.

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 local agency 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, and if required by the current Stewardship and Oversight Agreement (SOA) or specific Project Oversight Agreement, approval of the work-around must be obtained from 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 local agency 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.

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 local agency must transmit all certifications to the DLAE for all federal-aid projects along with the Request for Authorization. Certification No's. 1 and 2 are approved at the district level. Certification No's. 3 and 3W require headquarters acceptance and may require FHWA approval pursuant to the current Stewardship and Oversight Agreement or specific Project Oversight Agreement.

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 certification 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: Project Certification and 17.08.06.00 of the Caltrans Right of Way Manual.

13.11 Emergency Relief Project Certification

Emergency Opening Phase

Emergencies require rapid response. An 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 local agency right of way is extremely rare. If right of way 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, an 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 of the 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 shall 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 local agency 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: Project 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 are limited to emergency and exceptional situations only and require pre-approval from Caltrans Division of Right of Way and Land Surveys (Headquarters) and the Federal Highway Administration.

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. Local agencies 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 local agency 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. 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 local public agency 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. CPUC Application Approval of Project Railroad Plans for final project PS&E
2. Identification and acquisition of railroad real property rights
3. Obtaining an agreement with the railroad for physical construction of the project

California Public Utilities Commission Application Approval Required for 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 (https://www.cpuc.ca.gov/General.aspx?id=3862).

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.

Agreement with Railroad for Physical Project Construction

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 local public agency 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 local agency'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 shall be terminated, modified, or 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 District R/W staff. To ensure the most efficient and expeditious implementation of mitigation commitments, it is imperative that the local agency 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 local agency will certify that the issues have been resolved. Because local agencies 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 local agencies 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 local agency. 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 local agency with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications 1 and 2 will be accepted in the district. Certifications 3 and 3W will be forwarded to Caltrans headquarters for review and may require FHWA's approval pursuant to the current Stewardship and Oversight Agreement (SOA) or Project Oversight Agreement (POA).

13.12 Reimbursement/Fiscal Policy

Purpose

This section contains critical requirements and basic principles relating to the eligibility of R/W transactions for federal reimbursement. From this overview, the local agency 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 local agency 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 local agency 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 local agencies.

The local agency 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 Agency's Expenditures

Reimbursement of local agency'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 local agency's project and fiscal system. The local agency is responsible for correctly identifying and segregating reimbursable costs as prescribed by federal and state requirements.

Local agencies submit individual project claims to Caltrans periodically. Caltrans is responsible for obtaining reimbursement from FHWA for the local agencies. 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 local agency 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.

Reference should be made 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 shall 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 local agency will be asked to justify or support the costs. Any costs which cannot be justified or supported shall be declared ineligible for federal reimbursement and the local agency 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 local agency 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.

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 shall 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 the 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 local agency's Final Report as the basis for the final voucher. The Final Report of R/W Expenditures must follow the Detail Estimate submitted to the FHWA.

Record Retention

Local Agency-State Agreements provide for retention of records. Ordinarily, this is a three-year period after FHWA payment of the final voucher or a four-year period from the date of the final payment under the contract, whichever is longer.

Note: All documents and papers related to the project must carry the federal-aid project number for identification.

Federal Policies Specifically Related to the Reimbursement of Right of Way 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 [see 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 local agency 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 local agency 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 local agency, 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 (form RW 13-15) 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 local agency 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.

Local agencies 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, and the acquisition of property specifically for the purpose of exchange with another governmental agency or utility company.

The disposition of excess land is accomplished in the following number of ways: competitive bid sales, fair market value exchanges, or inclusion into the R/W in a new project. (Federal funds cannot be used for the acquisition of excess lands).

Sales of Excess - Damages

FHWA regulations set forth criteria concerning transactions involving the sale of excess property for more or less than the original cost.

Generally, local public agencies will not request federal moneys on the acquisition of excess parcels, but where federal participation is involved in excess acquisition, the subsequent sale or disposal of the parcel no longer requires the local agency to return a portion of the proceeds to

FHWA. The proceeds of the sale must be used for subsequent Title 23 (US Code) eligible projects. The local agency's accounting procedures must be able to track these Title 23 funds.

On federal-aid R/W projects, damages may be claimed 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.
- Excess exchange or sale transaction must occur within two years after opening the highway 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.
- Local agency receives less than the value of the excess when the excess is sold or exchanged. Damages may be claimed for reimbursement under the conditions detailed above.

Exchange Transactions

When local agency-owned land is exchanged for other land to be incorporated into the R/W of a federal-aid project, federal funds may participate in the current fair market value of the excess land being exchanged. However, federal participation will not exceed the fair market value of the land being acquired.

Note: FHWA is likely to be involved in two transactions; the initial acquisition and the subsequent exchange or disposal.

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 local agency receives less than the exchanged land's fair market value.
- 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, but for severance damages (including selling costs), the excess parcel must have been originally purchased on a project with federal participation.

Right of Way Sales Credits

Sales credits are due to FHWA when R/W bought with federal funds are sold, then subsequently declared to be excess because of an alignment change, modification or termination action. 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 excess results because the property is no longer needed for the purposes of the highway 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 (23 CFR 480).
- 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 local agency.

Rental Income and Expense and Disposition of Improvements

Vacated or improved land, acquired prior to actual need for highway construction must 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 local agency. The local agency 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. 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 must be given to the acquisition phase and not the rental phase.

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 local agency 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 local agency for a request to develop before the local agency 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. Local agencies 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 shall 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.

Local Agency – A unit of government (e.g., county, city, and municipality) authorized to undertake a project for which federal-aid is requested. This is sometimes referred to as local public agency.

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 local agency (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 local agency-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 shall 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 13.12: 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 local agency 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 (23 CFR 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 (49 CFR 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(b) and (c)
https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=ed0244e664c6a24e7f62848547de88f9&rgn=div8&view=text&node=23:1.0.1.7.23.3.1.5&idno=23

Caltrans Right of Way Manual
https://dot.ca.gov/programs/right-of-way/right-of-way-manual

Local Assistance Program Guidelines (LAPG)
https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-program-guidelines-lapg

Local Assistance Procedures Manual (LAPM)
https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm

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 as amended (Uniform Act)
http://www.fhwa.dot.gov/real_estate/publications/act.cfm

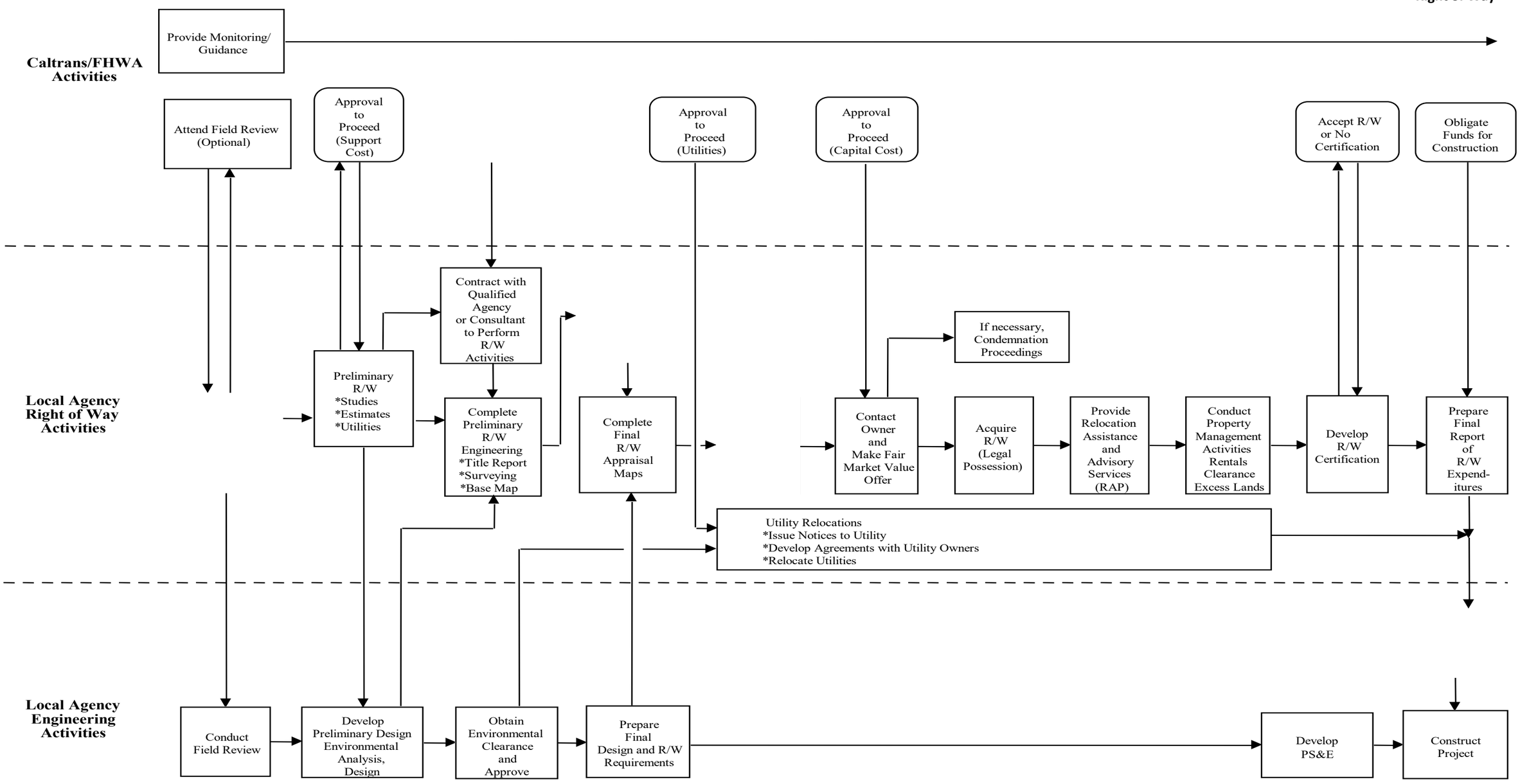

Figure 13-1: Right of Way Procedures Flowchart

Chapter 14 **Utility Relocation**

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Exhibits

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

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
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
LAPM 14-D: Notice to Owner
LAPM 14-D-REV: Revised Notice to Owner

EXECUTIVE SUMMARY

A. Introduction

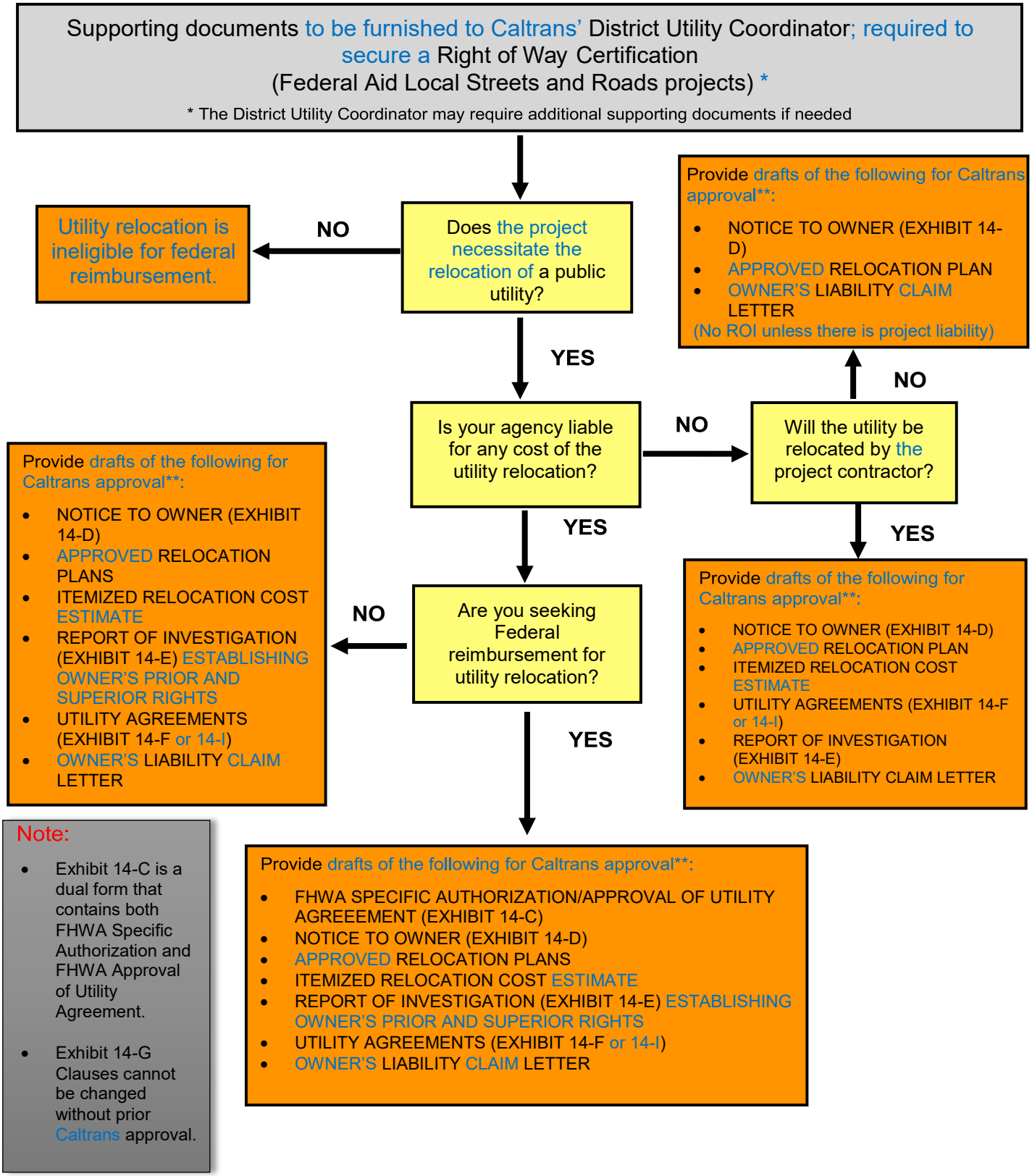
After the environmental document (NEPA) has been approved by Caltrans or FHWA, the administering agency may request an RFA for R/W and/or Utility Relocations. Utility relocations are required on most transportation projects. A conflict exists when a utility must be relocated, adjusted, protected-in-place 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 Agencies 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 the Federal Highway Administration's (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 agency 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 CFR710.203), and Uniform Act (49 CFR 24: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted Programs).

Forms and Exhibits included in this chapter are to provide the local agency with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The local agency has the option to modify the format of these forms or to use its own forms. However, the local agency's own forms have to 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.

Any Federal-aid project that involves any R/W utility relocations shall be accomplished in accordance with the Utility and Buy America Procedures described in the Caltrans Right of Way Manual, Chapter 13.

These manuals are available online at the following URLs:

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 has been identified as 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 – Local agency'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 Local Agency will bear relocation costs for facilities installed within an Easement area. The Local Agency 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 Local Agency.

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 local agency 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 [ASCE], 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 local agency 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 local agency's counsel.
- Complete Exhibit 14-E: Report of Investigation (ROI). The ROI is a document that determines the local agency'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 local agency is legally liable to pay for any portion of the relocation.

The Utility Coordinator shall send a proposed copy of the ROI, Notice to Owner (NTO), and Utility Agreement to 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 local agency 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 local agency in such circumstances.

Notifying Owner

- After the conflict resolution plan is approved and liability is determined, the Utility Coordinator shall 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 local agency 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 local agency shall 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 local agency 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 local agency liability.
- The local agency'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 shall 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 shall 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 to the procedures described in LAPM Chapter 5: Invoicing.
- The Project Engineer and Utility Coordinator shall 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 local agency 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 local agency'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 local agency. This required documentation is met by the use of detailed inspector's diaries or their equivalent.

If the local agency 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 local agency must provide the proposed utility relocation plan to the DLAE for forwarding to the District Right of Way 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, Part 645. Local agencies 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 local agency 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 local agency's relocation costs

Such review typically takes three weeks. Submission must be sent in advance of the proposed Right of Way 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 local agency 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 local agency 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 local agency must also request and receive Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement form (for each utility

relocation). Form 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 local agency'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 Agency's Highway Contractor

If the relocations are to be performed during the construction phase by the local agency's highway contractor, the work should be included in the Plans, Specifications and Estimate. The local agency 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 local agency'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 local agency 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 local agency 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 local agency used the pre-approved utility clause from Exhibit 14-G: Utility Agreement Clause. For local agency owned utilities, the appropriate agreement and clauses for the local agency to use are found in Exhibit 14-I: Local Agency/Utility Owner Special Agreement.

Upon approval, Caltrans will provide the local agency 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 local agency 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 local agency, 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 an R/W clearance item and invoicing for federal reimbursement in that fashion. If processed as an 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 local agency 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 local agency buying the facilities and having them removed by some other method.
- Where legitimate removal without replacement charges are included in a utility owner's invoice and the local agency 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 local agency 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 a local agency 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 shall 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 local agency 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 local agency 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 local agency to full Specific Authorization status before the local agency 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 is 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 in this chapter) 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 local agency's Project Engineer. Such confirmation letters shall 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 local agency 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 shall 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 shall be followed to ensure the maximum safety during construction of the project.

Note: For projects on the SHS: All local agency projects on the SHS shall 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 online 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 local agency'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 of 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 (ROW 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.

Moving Ahead for Progress in the 21st Century (MAP-21)
https://www.fhwa.dot.gov/map21/

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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FIGURES

Figure 15-1: Advertise & Award Project Flowchart 1

EXHIBITS

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 15-A: Local Agency Construction Contract Administration Checklist
Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist
Exhibit 15-C: Local Agency Project Advertising Checklist
Exhibit 15-D: Bid Tabulation Summary Sheet (Sample)

Exhibit 15-G: Constuction Contract DBE Commitment
Exhibit 15-H: DBE Information —Good Faith Efforts
Exhibit 15-I: Local Agency Bid Opening Checklist
Exhibit 15-L: Local Agency Contract Award Checklist
Exhibit 15-M: Detail Estimate

Chapter 15 **Advertise and Award Project**

15.1 INTRODUCTION

This chapter, LAPM Chapter 16: Administer Construction Contract, and LAPM Chapter 17: Project Completion are for use by local agencies 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.

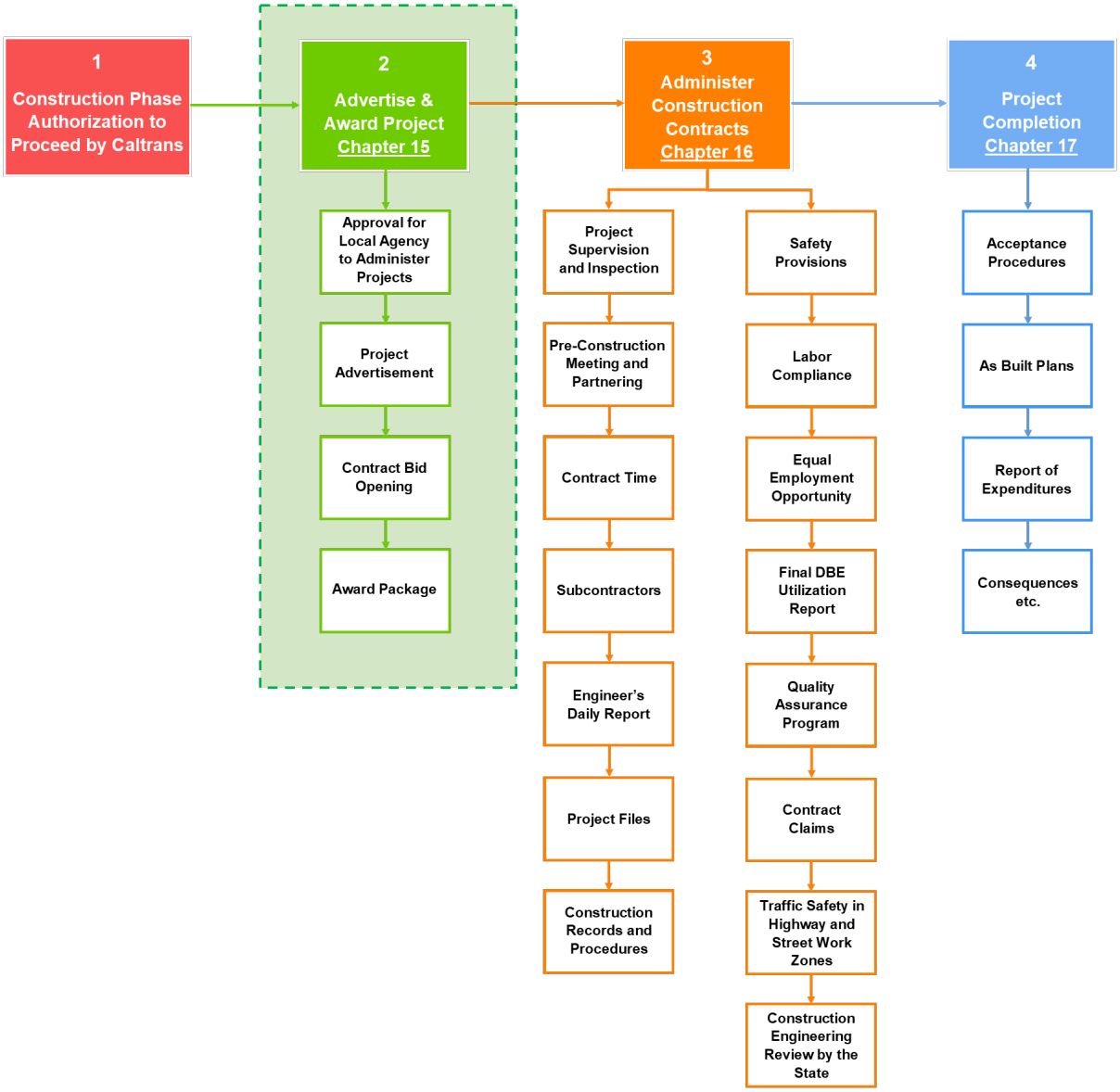

Figure 15-1: Advertise & Award Project Flowchart

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 local agencies. Each local agency 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 Right of Way work for the Federal-aid project is complete and the local agency is ready to hire a contractor.

15.2 Definitions of Terms/Acronyms

Bid Rigging – A conspiracy to disrupt or circumvent the competitive environment by establishing a competitive advantage for certain bidders.

CE – Construction Engineering. This phase includes the work of project advertising[1] through construction, preparation of as-built plans, final estimates, and payments. It includes all of the post-award activities necessary for the contracting agency to inspect, manage, and oversee the construction of a federal-aid construction project. This phase must be authorized prior to advertising, and CE must be separately identified in this authorization.

Contingencies – An amount of funds usually a small percentage of the detail estimate, set aside for unforeseen items or quantities of work not specified in the contract documents, but required to complete the project. The percentage used for contingencies varies depending on the type and scope of work. Usually ten percent but may be exceeded (with justification) if there is a large amount of supplemental, but contingencies should always be at least five percent.

Contract Administration – Includes advertising, opening bids, award, and execution of the contract; control of work and material; and making payments to the contractor.

Contractor – The person or persons, firm, partnership, corporation, or combination thereof, who have entered into a contract with the administering agency, as party or parties of the second part of his/her or their legal representatives.

DBE – Disadvantaged Business Enterprise. A for-profit small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens (or lawfully admitted permanent residents) of the United States and (1) any individual who a federal-aid recipient finds to be a socially and economically disadvantaged individual per 49 CFR 26 on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged as determined by the Small Business Administration (see 49 CFR, Part 26).

E-76 – Federal-aid Program Document titled: Authorization to Proceed Form

EA – Expenditure Authorization number

[1] CE can include the cost of advertising and award preparation, but only after the phase has been authorized.

Finance Letter – A document required by Local Program Accounting (see LAPM 3-A: Project Authorization/Adjustment Request) and submitted by the administering agency to Caltrans with information required as backup for the federal-aid/state project agreement.

Invoice – A detailed list of expenditures that an administering agency requests reimbursement for with federal funds, pursuant to the Local Agency-State Agreement (see LAPM Chapter 5: Invoicing, Exhibit 5-B: Sample Federal-Aid Invoice with Two Appropriations & Different Reimbursement Rates (Except for STIP and ATP Projects)).

Local Agency-State Agreement – Agreement between the State and local agency (see LAPM Chapter 4: Agreements for more detail). Generally refers to the Master Agreement and all supplemental agreements (Program Supplements) to the Master Agreements. These agreements are required for the State to provide reimbursement to the local agency for all federal-aid projects.

Locode – Numeric identifier for each local agency or administering agency (assigned by the Division of Local Assistance).

NHS – National Highway System, a specially Designated Highway System established by the Intermodal Surface Transportation and Efficiency Act of 1991 and adopted by the United States Congress. "Enhanced NHS" refers to the roads expanded or enhanced by MAP21; Section 1104 of MAP21 added to the NHS those roads that were at the time functionally classified as principal arterials, but not yet part of the NHS.

Office Engineer – Chief of the Headquarters or District Office of Office Engineer. The office engineering unit is responsible for insuring that the PS&E is complete, biddable and buildable.

PE – Preliminary Engineering, this phase includes all project initiation and development activities undertaken after its inclusion in the approved FSTIP through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to complete the NEPA document.

Prequalification – The AASHTO defines prequalification as a means of predetermining job experience and work capacity and to identify individuals and organizations from which the agency may accept a bid. The AASHTO also has encouraged the use of prequalification procedures in its 1981 Suggested Guidelines for Strengthening Bidding and Contract Procedures. Prequalification should not be used to restrict or discourage other responsible bidders from submitting bid. Ref: Federal-aid essentials: https://www.fhwa.dot.gov/federal-aidessentials/.

R/W – Right of Way, this phase includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.

Report of Expenditures – Collectively refers to the following report documents but not limited to: Final Inspection of Federal-Aid Project (FHWA Form 1446C), Federal-Aid Final Invoice, Change Order Summary, Final-Report Utilization Disadvantage Business Enterprise (DBE) and First-Tier Subcontractors, Materials Certificate. See LAPM Chapter 17: Project Completion.

Resident Engineer – A qualified engineer who is empowered to administer the construction contract. Pursuant to California professional engineering licensing requirements, the resident engineer may be unlicensed provided their work is performed under the review of a licensed engineer.

Responsible Charge – A full time, public employee of the local agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms,

conditions, and specifications of the contract shall be in responsible charge of each contract or project. The regulation is silent about engineering credentials. Thus, the person in "responsible charge" of local agency administered projects need not be an engineer. This requirement applies even when consultants are providing construction engineering services. Ref: 8-4-2011 FHWA Memo Responsible Charge.

Supplemental Work – Work that is anticipated but because of its uncertainty, cannot be included as a contract item e.g., additional staking, utility work, etc. If supplemental work is determined to be needed, a change order is required to include it in the contract. This work should normally be part of the contingencies.

Surety – A security against loss or damage or for the fulfillment of contract obligation, bond.

15.3 Approval for Local Agency to Administer Projects

Significant NHS Projects

Caltrans must approve the local agency's construction administration procedures before a local agency can advertise the construction of a federally financed significant NHS project (see LAPM Chapter 7: Field Review for the determination by the DLAE of which NHS projects will be considered significant). The procedures should be discussed in general at the field review and detailed written procedures shall be approved by the DLAE before the local agency will be allowed to administer any construction contracts for the project. Additionally, a local agency shall 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 Headquarters DLA for assistance with the review and approval of the local agency procedures.

All Other Projects

Approval by Caltrans of the local agency's construction administration procedures will not be required for all other projects. However, each agency 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. A local agency shall not advertise a project until it has received in writing an Authorization to Proceed with construction from Caltrans (see LAPM Chapter 3: Project Authorization).

15.4 Project Advertisement

Introduction

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 requires:

> 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 local agency personnel, unless arrangements are made to hire a consultant. If a consultant is used, the local agency must still designate an employee of the agency as the person in responsible charge of the project.

Construction engineering for locally administered projects shall be performed in accordance with the requirements found in LAPM Chapter 16: Administer Construction Contract of this manual.

Each local agency and all of its contractors, subcontractors, and vendors shall take all reasonable steps to assure that DBEs have equitable opportunity to compete for and perform contracts (see LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises).

Warning: No project shall be advertised for bids, nor shall any project work (by contract or other than contract) be undertaken, and no materials shall be purchased on any federal-aid project, prior to issuance of Authorization to Proceed by FHWA. Violation of this requirement shall result in the project being ineligible for federal funding.

Only one exception to this requirement can be made. It is for emergency relief projects involving emergency repair/opening of a facility. For more information on emergency relief projects see the Local Assistance Program Guidelines (LAPG) Chapter 11: Emergency Relief.

Advertising costs shall be charged to the preliminary engineering work authorization if such authorization has been requested and has been established for the purpose of federal reimbursement.

Prequalification of Contractors

The Federal Highway Administration (FHWA) permits the use of a prequalified list of Prime Contractors developed by the local agency, in accordance with 23 CFR, Section 635.110(a), Licensing and Qualifications of Contractors. 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 a local agency 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 local agency would submit a package to their District Local Assistance Engineer 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 shall 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:

- Contractors are prequalified on a project by project basis. In such a case, local agencies 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.
- 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 local agency 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. Local agencies should consult with their District Local Assistance Engineer staff regarding federal participation for contractor pre-qualification.

For further information and discussion on prequalification of bidders, see the AASHTO publication on Suggested Guidelines for Strengthening Bidding and Contract Procedures (which is also available in the FHWA Contract Administration Core Curriculum).

Procedures

Prior to project advertisement, the administering agency shall certify that their final PS&E package complies with all applicable federal and state regulations and procedures. Local agencies should also complete and retain the Exhibit 15-C: Local Agency Project Advertising

Checklist in the project files prior to requesting an Authorization to Proceed. All administering agencies must submit a completed Request for Authorization with the PS&E Certification before they can receive verification that construction has been authorized by Caltrans.

Upon receipt of Authorization to Proceed for construction from Caltrans, the local agency can proceed to advertise the project.

During the advertising period, the administering agency shall 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 local agency is required to certify that all bidders certify receipt of all addenda. The administering agency shall ensure free and open competition. The advertisement period is determined by the administering agency. A minimum advertisement period of three weeks is required for all federal-aid projects. Caltrans District Local Assistance Engineer may approve shorter periods in special cases where justified with a local agency's Exhibit 12-F: Cost – Effectiveness/Public Interest Finding. The advertising period begins with publication of a Notice to Contractors in a newspaper receiving wide local circulation. The Notice shall identify the DBE goal. The administering agency is responsible to approve and issue all addenda to the PS&E during the advertising period.

The local agency shall assure that all updated estimates are fundable from available local or federal resources.

As soon as the project is advertised, the local agency shall furnish the DLAE with one copy of the as advertised plans and special provisions or two copies if structures (bridges) are involved.

15.5 Contract Bid Opening

Introduction

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 the bidder, the reading of the bids confirms whether his bid is successful. For the local agency 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.

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.

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 local agency's standard specifications govern regarding what constitutes a bidding irregularity. Accordingly, the local agency'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 local agency's qualification requirements, or because of State or federal suspension/debarment action. The administering agency should check to see if a contractor is suspended or debarred from federal contracts. A publication titled, A Listing of Parties Excluded from Federal Procurement and Nonprocurement Programs is available electronically in the internet 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.

Procedures

The administering agency shall follow its own procedures for bid opening, provided such procedures include:

- As bids are received, they shall be logged in and stamped with the time and date.
- The bids shall 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 shall be publicly opened and announced either item by item or by total amount.
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the bid opening.

- Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

The agency's bidding procedures shall not discriminate against any qualified bidder regardless of political boundaries. No bidder shall 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 local agency may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with State laws. No local agency shall bid in competition with, or enter into a subcontract with private contractors. As bids are received, they shall be logged in and stamped with the time and date. The bids shall be retained in a secure place until the designated time and place for public opening.

The administering agency shall 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 15.6: Contract Award, Bid Analysis Process, and guidelines on Preparing Engineer's Estimate, Bid Review and Evaluation, dated January 20, 2004.

The administering agency shall 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 administering agency and not noted above as being received by the bidder, this Bid may be rejected.

15.6 Contract Award

Introduction

Warning: No project shall be advertised for bids, nor shall any project work (by contract or other than contract) be undertaken, and no materials shall be purchased on any federal-aid project, prior to issuance of Authorization to Proceed by Caltrans or the FHWA. Violation of this requirement shall result in the project ineligible for federal funding.

The contract award is a critical milestone for all federal-aid projects. At this point, the administering agency must have a complete financial package assuring adequate funding for the project. The administering agency shall award federal-aid contracts on the basis of the lowest responsive and responsible bidder. It is the administering agency's responsibility to

assure that all successful bidders are licensed contractors upon award of any contract incorporating State or federal-aid funds.

Bid Analysis Process

The administering agency 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 Contract Cost Data publication by Caltrans is available to assist local agencies in preparing accurate engineers estimates. This annual publication is available in electronic form on the Internet. Instructions for downloading this information are located at: http://ppmoe.dot.ca.gov/des/oe/contract-cost-data.html.

Not all of 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. In order 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 shall 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, the FHWA 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. The web site is at http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm. 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 constitutes 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.

Award Procedures

Unless it is a Project of Division Interest, the administering agency shall 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 the FHWA. Written justification shall be included in the project file for all projects that are not awarded to the lowest bidder. The administering agency shall 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 administering agency shall retain the executed contract, document the award date, and the Preconstruction conference minutes. The State shall not participate in resolving disputes between the administering agency and its bidders.

It is the responsibility of the administering agency 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 the 'Notice to Proceed' has been given.

Post-Award Reviews

The administering agency 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

Termination of Contracts

a. All NHS contracts exceeding $10,000 shall contain suitable provisions for termination by the administering agency, including the manner by which the termination will be affected and the basis for settlement. In addition, such contracts shall 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 administering agency shall consult with and receive the concurrence of the Caltrans DLAE. In addition, for all other federal-aid contracts the administering agency shall 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 local agency federal-aid plans, specifications, estimates, advertising, and award procedures are to be followed when an administering agency awards the contract for completion of a terminated federal-aid contract.

d. When an administering agency 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:

   1. The amount representing the payments made under the original contract plus payments made under the new contract, or

   2. 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, the 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.

15.7 Award Package

Prior to submitting the first invoice for the construction phase, and within sixty (60) days of contract award, the administering agency 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: Local Agency 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 administering agency's Resident Engineer assigned to the project must complete and sign the Exhibit 15-B. The purpose of this checklist is to assure that the Resident Engineer 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 Resident Engineer is a consultant, the Local Agency Employee in Responsible Charge shall 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 is needed, the administering agency 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 administering agency'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 administering agency must maintain the Federal pro rata share as originally authorized for the construction phase, if not adjusted at award.

15.8 REFERENCES

23 CFR 630 Subpart C
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=034a96d52b105f9eb4cbb41d07e23792;rgn=div5;view=text;node=23%3A1.0.1.7.21;idno=23;cc=ecfr

23 CFR 635
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr635_main_02.tpl

23 CFR Part 40
https://www.transportation.gov/sites/dot.dev/files/docs/PART40_2012.pdf

23 USC 112
https://www.govinfo.gov/app/details/USCODE-2011-title23/USCODE-2011-title23-chap1-sec112

23 USC 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
http://www.search-california-law.com/research/ca/PCC/6100./Cal-Pub-Cont-Code-Section-6100/text.html

California Public Contract Code Section 7106
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=7106

DOT, FHWA 1997 Contract Administration Core Curriculum
https://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm

FAST Act
https://www.fhwa.dot.ca.gov/fastact/

FHWA Final Report Process Review on Competition in Bidding and Engineer's Estimate Review – 1991
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 – 1983
https://www.fhwa.dot.gov/programadmin/contracts/dotjbid.cfm

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EXHIBITS

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 16-A: Weekly Statement of Working Days
Exhibit 16-B: Subcontracting Request
Exhibit 16-C: Resident and Assistsance Engineers Daily Report
Exhibit 16-D: Certificate of Proficiency
Exhibit 16-E: Independent Assurance Sampling and Testing (Form MR-0102)
Exhibit 16-F: Report of Witness Tests (Form MR-0103)
Exhibit 16-G: Corroboration Report (Form MR-0104)
Exhibit 16-H: Independent Assurance Sampling and Testing Log Summary (Form MR-0110)
Exhibit 16-I: Notice of Materials to Be Used (Form CEM-3101)
Exhibit 16-J: Notice of Materials to Be Furnished (form MR-0608)
Exhibit 16-K: Report of Inspection of Material (Form MR-0029)
Exhibit 16-M: Notice of Materials to Be Inspected (MR-0028)
Exhibit 16-N: Employee Interview: Labor Compliance/EEO
Exhibit 16-O: Federal-Aid Highway Construction Contractors Annual EEO Report
Exhibit 16-P: Employee Interview: Labor Compliance/EEO (Spanish Form)
Exhibit 16-Q: U.S. Dept. of Labor Office of Federal Contract Compliance Programs
Exhibit 16-R: Size, Frequency and Location of Sampling and Testing Tables
Exhibit 16-S: Caltrans Test Method - ASTM Test Method Conversion Chart
Exhibit 16-T1: Materials Requiring a Certificate of Compliance per Caltrans Standard Specfications
Exhibit 16-T2: Materials Requiring a Certificate of Compliance per the Greenbook
Exhibit 16-UI: Initial Potential Claim Record
Exhibit 16-UF: Full and Final Potential Claim Record
Exhibit 16-US: Supplemental Potential Claim Record
Exhibit 16-V: Source Inspection Request Local Agency to DLAE
Exhibit 16-W: Source Inspection Request to TransLab
Exhibit 16-Y: Monthly Progress Payment Item Quantity Calculation Sheet,
Exhibit 16-Z1: Monthly DBE Trucking Verification
Exhibit 16-Z2: Acceptance Testing Results Summary Log

CHAPTER 16 **Administer Construction Contracts**

16.1 INTRODUCTION

Chapter Guidance

This chapter provides the procedures and guidelines local agencies must follow when administering the construction of federal-aid projects. 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.

Contract Administration Delegated to Local 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 local agency 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 local agency through a state/local agreement called a Master Agreement (specific to each local agency) and the program supplements (specific to each project). Delegation to a local agency is based on the following conditions:

- An employee of the local agency is in responsible charge of the project and that person is a full-time employee of the local agency
- All federal requirements are met in performance of the work
- The local agency 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.

Local Agency Procedures when Administering a Federal–Aid Construction Contract

For projects off the State Highway System (SHS), a local agency must follow the Local Assistance Procedures Manual (LAPM), most notably 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), a local agency must follow the procedures found in the following four manuals:

- Local Agency Resident Engineer Construction Manual Supplement
- Caltrans Construction Manual
- 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 shall prevail. However, if mandated federal-aid requirements were inadvertently omitted from the contract, the local agency must amend the contracts via change order to correct the omissions.

Available Training for Federal-Aid Construction Administration

The following two courses are offered to local agency Resident Engineers (REs) and other staff through the California Local Technical Assistance Program Training:

- The 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. To find out more information go to the HQ Local Assistance Training webpage.

Other Available Resources

When a problem arises, the RE has many resources to consult or request assistance, in addition to the LAPM, including the:

- 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 Caltrans Construction Manual 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. Caltrans Construction Manual, 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.

Contract Administration Costs Eligible for Reimbursement

Construction engineering costs (CE) 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 local agency 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 local agency must provide a full time employee of the local agency who is accountable for the project. This individual is the person in responsible charge of the project. For projects administered by a local agency, 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. A consultant is performing the construction engineering services

b. A consultant has been hired as the City Engineer or Public Works Director

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 project staff, local agencies 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 local agencies and consultant staff at all stages of the project

Provide Adequate Project Staff

The local agency 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 local agency 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 local agency may employ a consultant to provide construction engineering services such as RE’s, inspectors, lab testers or

surveyors, however, the local agency must provide a full-time public employee to be the person who is in responsible charge.

Document the Project Staff

List the names, titles and contact number of all staff (Agency and consultants hired by the agency) 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 local agency's staffing.

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

A local agency 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 local agency is unable to produce requested records, it shall be assumed by reviewing personnel the required actions were never performed. Organized project files can minimize these negative assumptions.

During the construction phase, Caltrans Construction Oversight Engineers periodically perform reviews and inspection of the local agency 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.

Organization of Project Records

Each agency must develop or adopt a filing index to be used on all federal-aid projects administered by the agency off the SHS. An agency 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. Local Agency Project Personnel Sheet (names, titles and phone number)
    b. Local Agency 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. Exhibit 16-A: Weekly Statement of Working Days
5. Quality Assurance:
    a. Copy of Quality Assurance Plan
    b. Independent Assurance
        i. Exhibit 16-D: Certificate of Proficiency
        ii. Certification of Accreditation of Testing Lab (TL-0113)
        iii. Equipment Calibration Verifications (Nuclear Gauge)
    c. Exhibit 16-I: Notice of Material to be Used (Form CEM-3101)
    d. Acceptance Testing Results and Initial Tests (Make a Category 6d for each material such as, 6d1.i, Cl 2 Base Test Summary Log, 6d2.ii Cl 2 Base Test Results- 6d2.i AC Test Results Log etc. Include items below for each):
        i. Test Result Summary Log
        ii. Test Results
    e. Exhibit 16-T: Materials Typically Accepted by Certificate of Compliance
    f. Exhibit 16-K: Report of Inspection of Material (Form MR-0029)
    g. Buy America Certifications
    h. Exhibit 16-G: Corroboration Report
6. Engineer's Daily Reports
    a. Resident Engineer's Daily Report (Exhibit 16-C, or similar)
    b. Assistant Engineer's Daily Report (Exhibit 16-C, or similar)
    c. Structures Engineer
7. Photographs
8. Contract Item Pay Quantity Documents

9. Exhibit 16-Y: Monthly Progress Payment Item Quantity Calculation Sheet, or similar
10. Change Orders (CO)
    a. CO 1
        i. Approved CO or equivalent (agencies may use their own form or use State form CEM-4900)
        ii. CO Memorandum/Transmittal Letter or equivalent (agencies 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.
11. Progress Pay Estimates and Status of Funds
12. Labor Compliance and Equal Employment Opportunity (EEO) records
    a. Certified Payrolls
    b. Exhibit 16-B: Subcontracting Request
    c. Photo Documentation of all required posters: www.fhwa.dot.gov/programadmin/contracts/poster.cfm
    d. Labor Compliance Interviews
    e. Exhibit 16-O: Federal-Aid Highway Contractors Annual EEO Report
13. Disadvantaged Business Enterprise (DBE) Records
    a. Exhibit 15-G: Construction Contract DBE Information
    b. Exhibit 15-H: DBE Information - Good Faith Efforts
    c. Exhibit 16-Z1: Monthly DBE Trucking Verification
    d. DBE Substitution Supporting Documentation (if applicable)
    e. Exhibit 17-F: Final Report –Utilization of DBE and First –Tier Subcontractor

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.

Availability of Records for Review or Audit

The record retention period for the non-Federal entities for financial purposes is 3 years and begins when the final voucher is submitted in FMIS and required documentation is submitted to FHWA per the stewardship and oversight agreement. 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 local agency must schedule a pre-construction conference with the contractor.

Required Attendees:

- Local Agency Representative
- Resident Engineer (if this is not the same person as above)
- Contractor

Possible/Recommended Attendees:

- Local Agency Labor Compliance Officer
- Local Agency Safety Officer
- Other Affected Agencies (Fish and Wildlife, Parks and Rec, etc.)
- Emergency Services (Fire, Police, Ambulance, etc.)
- Public Utilities (if relocation or temporary shut downs 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 local agency 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 the Exhibit 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 Requiring Buy America Certificates
- 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 local agency and should be kept in the project files.

16.5 PARTNERING

Partnering is a relationship between the local agency and the contractor, formed in order 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. More information about the partnering process can be found at the Partnering with Caltrans website.

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 local agency. 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

Introduction

Contract time is the maximum time allowed in the contract for completion of all work contained in the contract documents. The local agency must maintain a written record of contract time, often called the Weekly Statement of Working Days (WSWD) or Weekly Project Progress Record. The local agency 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 Exhibit 16-A: Weekly Statement of Working Days, is an acceptable record of project progress. However, a local agency may use their own form, as long as 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.

"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 exists 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 2010 Caltrans Standard Specifications, the 2018 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.

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.

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 Exhibit 16-A: Weekly Statement of Working Days is contained in Section 3-804, Time of the Caltrans Construction Manual.

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.

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

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

Introduction

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).

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 Exhibit 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.

Section 5-1.13, Subcontracting of the Caltrans Standard Specifications 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: Subcontractor List/Bidders List.
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 the 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: Subcontractor List/Bidders List.

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 local agency'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 actually 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 your local agency'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 Construction Oversight Engineer (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), Substitution Process 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 Section 3-507C (3) of the Caltrans Construction Manual.

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: Employment Practice; Labor Compliance, EEO, DRB Construction Records and Accounting Procedures of this chapter for additional requirements.

STEP 2: Comparing the Subcontracting Request to the Bidder Disadvantaged Business Enterprise (DBE) Commitment Form

Code of Federal Regulations (CFR) DBE Requirements in the Bidding Process

The Code of Federal Regulations requires that contractors take necessary and reasonable steps to ensure that DBEs have opportunity to participate in federal-aid contracts (49 CFR 26). 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 stipulate 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 local agency'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 local agency 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 local agency 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 local agency's Labor Compliance Officer and consult Part 1e of Exhibit 12-G: Required Federal-Aid Contract Language, and Section 8-304A (2), When the Listed DBE Does Not Perform the Work 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 Section 8-304B (2), Disadvantaged Business Enterprise Substitutions of the Caltrans Construction Manual. Follow the process carefully and maintain documentation in the project files.

STEP 3: Confirm the Prime Contractor has not Subcontracted Work that he is Required to do with their Own Forces

Limits on the Amount of Work Subcontracted

The CFR 635.116 requires the prime contractor perform at least 30 percent of work using the contractor's own organization. A local agency 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 the Subcontractors are not on the Department of Industrial Relation's Debarred Contracts List

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

Procedures

The local agency 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. The 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.

The 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 local agency personnel, which are pertinent to the work
- Activities performed by local agency 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.

See Exhibit 16-C: Resident and Assistance Engineers Daily Report for an example of both the RE's and Assistant RE's daily report forms used by Caltrans are shown as. The engineer's daily reports discussed herein are required in addition to any extra work reports submitted by the contractor. The daily reports must be kept current and in the project files.

16.9 EMPLOYMENT PRACTICE: LABOR COMPLIANCE, EEO, DBE

Labor Compliance

Labor compliance is the local agency'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 local agencies to enforce labor compliance provisions derive from the California Labor Code, the Code of Federal Regulations, regulations of the FHWA, 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 Agency Labor Compliance Officer

Annually, each local agency must designate a Labor Compliance Officer. The Labor Compliance Officer has the responsibility of overseeing the local agency's labor compliance program. The duties include:

- Providing appropriate labor compliance training for local agency 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.

Resident Engineer's Role

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 at the Pre-Construction Meeting

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 local agency policies.

Task 2: Prepare Daily Reports

See Exhibit 16-C: Resident and Assistance Engineers Daily Reports, earlier in this chapter for the information that is 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 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 Caltrans Construction Manual.

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 Exhibit 16-N: Employee Interview: Labor Compliance EEO, or the Spanish version of this form, Exhibit 16-P: Employee Interview: Labor Compliance EEO (Spanish Form). 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 item seven 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 V-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 V-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. DOL 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 local agencies 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 11-01 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 your local agency letterhead and modify the language as appropriate.

If the Contractor Refuses to Provide Payrolls

When 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 Chapter 8: Labor Compliance of the Caltrans Construction Manual 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 local agency
- 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 Caltrans Construction Manual for more information on Covered and Non-Covered employees.

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 VI, 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 FHWA Form 1273 calls the contractor's attention to these and other requirements.

State and federal laws mandates 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.

What is the REs Role?

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 local agency policies.
- Perform employee interviews (see item 5 under Labor Compliance).
- Verify EEO posters have been placed (see item 8 under Labor Compliance). The contractor's EEO Officer must be listed by name in the posted policy.
- Review Exhibit 16-O: Federal-Aid Highway Construction Contractors Annual EEO Report. 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 August 15th.
- Counter sign and submit PR-1391 to the DLAE by August 25 of each year.

Report EEO Violations

In accordance with the U.S. Department of Labor (DOL), 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 contact information, see Exhibit 16-Q: U.S. Department of Labor, Office of Federal Contract Compliance Programs (offices within California).

Disadvantaged Business Enterprises (DBE)

Federal regulations define DBE as firms owned and controlled by individuals who are either socially or economically disadvantaged, or both. 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 comes from the Title 49 Code of Federal Regulations Part 26 (49 CFR 26), FHWA form 1273, Disadvantaged Business Enterprises, Part 1, and Exhibit 12-G: Required Federal-Aid Contract Language.

The 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 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 a 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 demonstrate~~s~~ 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 has the responsibility of enforcing the DBE provisions of the contract. To fulfill this responsibility, the RE and support staff must have a working acknowledgement of the requirements. A good place to start is a complete review of Part 1, Disadvantaged Business Enterprises, of the Exhibit 12-G: Required Federal-aid Contract Language, found in your special provisions.

Prevention of DBE violations is preferable; in order 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 local agency policies. Ensure the field staff knows who should be performing DBE work. Be sure to emphasize the requirements for a DBE substitution, 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 (Exhibit 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 16.5: Partnering, 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.

During the Work

Activity 3: 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 is ultimately responsible for ensuring that a DBE performs a CUF. If a DBE fails to perform a CUF, the local agency should take actions to enforce the contract. These actions can include:

- Deny or limit credit towards the contract DBE goal
- Require the prime contractor to make Good Faith Effort to replace the DBE to meet the goal on remaining work
- Withhold progress payments

For additional information on CUF and failure to comply go to the FHWA website Federal-Aid Essentials for Local Public Agencies and choose Commercially Useful Function.

Activity 4: Ensure Submittal of Exhibit 16-Z1: Monthly DBE Trucking Verification Form

This form is used to determine how much credit percentage to allow for the trucking company toward the DBE contract goal. Ensure the contractor submits the Monthly DBE Trucking Verification form 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 weight tickets and canceled payment checks from the contractor. Cross-check the information against daily inspection reports as well. Refer to Section 8, Monthly DBE/UDBE Trucking Verification Form in the Caltrans Construction Manual for additional information.

After the Work

Activity 5: 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 6: 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 7: Withhold Payment if DBE Commitments were not met

If the contractor's 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. For example, if a change order eliminates a portion of an item originally designated to be performed by a DBE, this is beyond the contractor's control. If a change order increases the work allocated to a DBE, the contractor is not required to have the DBE perform the work but should be encouraged to do so. 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. Additional information regarding DBE enforcement, substitutions, violations and penalties see Section 16.7: Subcontracting for more information pertaining to Approval of Subcontractors Prior to Starting Subcontracted Work.

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 be 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)

Introduction

A change orders is a legally binding document used to make changes to the original construction contract. Change Orders are negotiated agreements with the contractor that affect the cost, time, design or specification requirements, or a combination of the four.

The authority for local agencies to make changes to a contract is located in Section 4-1.05, Changes and Extra Work of the CTSS 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 local agency units, outside local agencies, or individuals may request changes. If the change order 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 change order, 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 local agencies, 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.

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.

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 local agency, not the Contractor, supporting any agreed prices
- A time impact analysis justifying any time extensions

Writing the Change Order

The change order 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 local agency'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 change order, 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 shall 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 shall 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 change order 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 change order.

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:

<u>Method 1: Increases and Decreases in Bid Items at Bid Item Unit Prices</u>

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.

<u>Method 2: Bid Item Unit Prices with a Payment Adjustment</u>

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 Section 9-1.06, Changed Quantity Adjustments, of the CTSS. 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 percent 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 percent 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 is in excess of 125 percent 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, 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 Caltrans Standard Specifications and the Construction Manual 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

<u>Method 3: Extra Work at Agreed Prices (Unit or Lump Sum)</u>

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 local agency'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 local agency's independent estimate to support the agreed price dollar amount shown on the Change Order.

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 Change Order can occur if the local agency has not fully justified and documented any agreed prices.

In some instances, local agencies 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 Section 3-9, Payment of the CTSS, Section 3-9 of the CTCM, and your 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. See Section 8-1.02D (8) of the CTSS regarding TIAs.

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 local agency.
2. If substantial benefits exist for the local agency, 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.

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 Section 5-315 of the CTCM. The examples follow a generally accepted format for writing change orders.

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 local agency 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 local agency 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, local agencies, Caltrans, etc. if applicable.
- For major changes on federal projects of division interest projects, indicate the name and date of discussion and concurrence, if any, by the FHWA engineer.
- 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).

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 Caltrans Construction Manual can be found here.

Participating and Nonparticipating: Federal-Aid Segregation Determination on Change Orders

For a change order, the RE must identify and segregate the funds required from each source. Change order work that is eligible for federal-aid reimbursement is often called participating. A change order 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 change order 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 3 years
- Adjustment of private facilities (signs, fences, sprinklers, etc.) unless included in a right-of-way (R/W) agreement or permit
- Proprietary items unless they meet the requirements for special exceptions

- 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 local agency 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
- Proprietary items specified without a Public Interest Finding
- Excessively expensive treatments that do not appear to be in the public interest

Local agencies are strongly advised to contact their District Local Assistance Office to discuss the issue of participating vs. non-participating on proposed change orders.

You cannot circumvent federal requirements by classifying work as non-participating.

For example, you cannot avoid the requirements of the Buy America regulations by declaring the steel in your project non-participating.

All questions regarding work eligibility for federal-aid reimbursement can be directed to the DLAE for guidance.

Other Issues

Quantity Balancing Change Orders

Several local agencies, 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 a local agency to accurately update their contingency balance on the project. As such, a balancing change order is not required, but is permissible.

Materials 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 local agencies 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 actually delayed by the ROW, railroad, or utility difficulty.
- The contractor did everything required by the contract to minimize the delay.
- The local agency was unable to exercise effective control of the situation despite its best efforts.

Process reviews should be conducted by the COE's 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.

For major change orders and/or Change Orders on Projects of FHWA Division Interest, FHWA may retain approval authority for such specific change orders.

16.11 Quality Assurance Program

Introduction

A Quality Assurance Program (QAP) is a program that will ensure the materials and workmanship incorporated into each construction project conform to the requirements of the contract plans and specifications including approved changes. The main elements of a QAP are an acceptance program and an independent assurance program.

For federal construction projects, each local agency is required to adopt a QAP. Caltrans will not process a Request for Authorization for Construction without verification of an adopted QAP. The QAP must be signed by the local agency 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 shall be kept on file and available for state review.

The local agency 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 local agency to FHWA.

A typical QAP is structured as shown below:

1) General Discussion
2) Variations for Projects on or off the SHS

3) Materials Acceptance Program
   a) Minimum Sampling and Testing Frequency Requirements
   b) Sample Testing Results Summary Log
   c) Materials Accepted by a Certificate of Compliance per the Contract Specifications
   d) Source Inspection Process
4) Independent Assurance (IA) Program
   a) Tester Certification Process
   b) Laboratory Qualification Process
   c) Equipment Calibration Process
5) Materials Certification Process for completed project

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 local agency must adopt the Caltrans QAP detailed in the following manuals and guides:

- Caltrans Construction Manual
- Construction Manual Supplement for Local Agency REs
- Local Assistance 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, local agencies may adopt the Caltrans QAP described above or may develop their own QAP conforming with the requirements of the QAP Manual and FHWA regulations. The local agency 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.

Consult the Quality Assurance Program Manual for complete information on developing and maintaining a QAP. A template for local agencies developing their own QAP can be found in Appendix Y of the QAP manual, or an alternative can be provided by your district Local Assistance Office.

Materials Acceptance Program

The QAP for all local agency projects shall include a materials acceptance program. A materials acceptance program must be used to determine the quality and acceptability of materials and workmanship incorporated into the project. The program must address soils and aggregates, and manufactured and fabricated materials.

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.

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 local agency 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.

The California Test Methods are published on the Internet at:
http://www.dot.ca.gov/hq/esc/ctms/index.html

ASTM Test Methods are available at the following Internet address:
http://www.astm.org

AASHTO Test Methods are available at the following Internet address:
http://www.transportation.org

The RE must ensure that field personnel who perform tests for compliance with the specifications are certified to conduct the test method indicated by the contract. This is discussed further under Independent Assurance Program.

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. Use Exhibit 16-Z2: Acceptance Testing Results Summary Log or a similar form. 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, and 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.

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 local agency'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 3 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 in regard to raw materials, fabrication processes, personnel certification, and in-process quality control testing.

The local agency 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 on the internet at the following address: https://dot.ca.gov/-/media/dot-media/programs/engineering/documents/mets/sigla-manual.pdf.

Source inspection is performed by the local agency 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 Section 6-3, Field Tests, of the Caltrans Construction Manual 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, Section 6-3.05B, Source Inspection Expense Deductions of the CTSS 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

A local agency 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 shall sign the Certificate of Compliance 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 Certificate of Compliance. The RE is responsible for insuring that a Certificate of Compliance is furnished with each lot of these materials delivered to the work site. Exhibit 16-T1: Materials Requiring a Certificate of Compliance Per the Caltrans

Standards Specifications and Exhibit 16-T2: 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 Certificate of Compliance shall 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 Certificate of Compliance 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 Certificate of Compliance for each item shall be kept in the RE's file.

Materials Requiring a Buy America Certification

Steel and iron products incorporated into the project must comply with Buy America requirements of the CFRs. All steel and iron 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.

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. A local agency 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 steel such as that used in falsework, sheet piling or shoring. A minimal use of foreign iron and steel is allowed provided that the total delivered cost to the project site is less than $2,500.00 or 0.1 percent of the contract amount, whichever is greater. Supporting invoices, including the cost of transportation, must be on file in the project records.

An local agency's failure to comply with Buy America provisions will result in the loss of federal funding for not only the applicable contract items, but likely will result in the loss of all federal funding authorized for the construction phase of the project.

Material QA Costs

Material inspection, testing and sampling costs are eligible to be charged to the construction engineering phase of the project.

Agencies using the Greenbook can, as outlined in Section 4-1.3.3, select a consultant laboratory to sample and test materials at distant locations. This specification allows for the agency to have the contractor pay for the costs of this service, however, the contractor shall not select or exercise authority over the consultant laboratory.

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 QAP Manual and 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 Title 23, Code of Federal Regulations, Chapter 1, Part 637 (23 CFR 637).

In the CFR, FHWA requires that:

- 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.

Responsibilities of the RE

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

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, local agencies, 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 agency/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 local agency'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 shall 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:
  - The AASHTO Materials Reference Laboratory (AMRL)
  - The Cement and Concrete Reference Laboratory (CCRL) inspection programs
  - The 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 local agency'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 AMRL and CCRL programs to fulfill proficiency sample testing program requirements.

Equipment Calibration General

The local agency laboratory shall 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 local agency is responsible for calibration of laboratory testing equipment used for testing on local agency projects, whether or not the equipment is owned by the local agency, a consultant contractor, or sub-contractor. Consultant laboratory-supplied equipment shall be calibrated by the consultant or local agency.

Calibration of test equipment must conform to Section 8-03, Field Tests of the Caltrans Construction Manual. 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 shall be firmly affixed to each piece of calibrated equipment. Decal type and required information are specified on page 63 of 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 shall be secured.

Equipment Calibration - Nuclear gauge

All local agnecy'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 (MPQP) 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 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.

Records

All material records of samples, tests, material releases and certificates of compliance for a given project shall be incorporated into the project file. It is recommended that this file be organized as described in Section 16.3: Maintaining Project Record of this chapter. The complete project file shall be available at a single location for inspection by Caltrans and FHWA personnel at any time during the construction project. The file shall be available at the local agency 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 be necessary to secure separate samples for each project; however, individual test reports are to be supplied to complete the records for each project.

Project Certification

Upon completion of the project, the RE must complete Exhibit 17-G: Materials Certificate. The RE and the local agency's Person in Responsible Charge must sign the certificate. All materials incorporated into the work which did not conform to specifications must be explained and justified on the Materials Certificate, including changes by virtue of change order. The original is submitted to the DLAE in the Report of Expenditures and a copy is placed in the project file.

16.12 Environmental Stewardship

Introduction

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 local agency 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.

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 form 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 Commitment 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 local agency 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 agency person in responsible charge, the agency environmental liaison, and the design team, as needed. Bring the environmental commitments to the attention of the contractor and agency 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

Introduction

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 local agency 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, change order bills submitted, 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 local agencies. This section outlines those procedures.

Procedures

State administered projects and projects on the SHS must follow the procedures outlined in the Caltrans Construction Manual. Local agency 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.

1. Source Documents
2. Contingency Balance Tracking
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 local agency 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 Chapter 4, Construction Details of the Caltrans Construction Manual.
- 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.

Exhibit 16-Y: Monthly Progress Payment Item Quantity Calculations is an example of a quantity calculation sheet.

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 local agency. This is accomplished by a local agency 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 Report 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. Invoices must also be supplied to support Material on Hand payments.

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 the Work

An anticipated changes sheet must be kept in the project files where the current estimated probable final cost of the work is recorded.

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 for more information. Chapter III, Section 3-9, Payment of the Caltrans Construction Manual is a good reference

document to assist local agencies in organizing their accounting system for a typical federal-aid project.

16.14 SAFETY PROVISIONS

Introduction

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.

Procedures

The contractor will be required under the contract specifications to comply with safety rules and regulations (see the FHWA Form 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 local agency 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.

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

Introduction

The purpose of this section is to ensure adequate consideration is made for traffic safety in highway and street work zones on all federal-aid construction projects.

Procedures

Each local agency 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 local agency'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 local agency 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 shall depend 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 local agency prior to implementation.

2. **Responsible Person**

   The local agency 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 LAPM Chapter 15: Advertise and Award Project, 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 local agency 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 Final Inspection and Construction Engineering Review by the State

A final inspection of the work should be made by the local agency. This inspection should occur prior to final completion and before project verification by Caltrans DLAE. Any punch list items resulting from this inspection must be completed by the contractor prior to the expiration of contract time. For details on final inspection, see LAPM Chapter 17: Project Completion, Section 17.3: Final Inspection Procedures for Federal-Aid Projects. The RE must also take this time to do one last review of the project Environmental Commitment Record, confirming all mitigations were performed and finalizing necessary documentation. Local agency construction engineering records may be reviewed during the life of the project or up to three years after final voucher, as outlined in LAPM Chapter 19: Oversight and Process Reviews.

16.17 Contract Disputes and Claims

Introduction

All federal-aid projects must include contract provisions containing administrative procedures for dealing with contractor claims. Claim procedures must be included in a local agency'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.

Background

A contract dispute is a disagreement between the contractor and the local agency, 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**.**

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 Section 5-1.09, Partnering of the CTSS. Section 5-1.43 [9-1.04], 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 local agency'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 local agency 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.

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

Local agencies 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, Potential Claim Records Claims

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

Local agencies 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 local agency has not issued a claims determination. The local agency 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.

False Statements Concerning Highway Projects

This section applies to all federal-aid highway construction projects.

Title 18 of the US Code Section 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 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 local agency is to conduct investigations on complaints and review records that are potentially vulnerable to fraud. It is also the local agency's responsibility to furnish the prime contractor with the required poster (Form FHWA-1022) and to ensure it is posted accordingly.

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 local agency 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 local agency or contractor
   - The interest rate does not exceed the rates provided for by statute or specification

d. Acts of local agency 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 local agency employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual local agency 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 a local agency 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 local agencies receive an adverse decision in an amount more than the local agency can support prior to the decision, or settles a claim in an amount more than the local agency 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 local agency pursed the case diligently and in a professional manner

Additional Funds

If contract claim defense and/or award costs will exceed the amount of federal funds authorized for the project, the local agency 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, the Caltrans Division of Local Assistance (DLA) will make the determination. Many of these programs may also require California Transportation Commission (CTC) approval for the additional funds. Caltrans Local Assistance Program Guidelines (LAPG) should be consulted for procedures for obtaining funding from the various Local Assistance funding programs.

Generally, the local agency 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 local agency's project supervision and inspection, including the keeping of proper records, will be considered in this determination.

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 local agency 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.

Documentation

The local agency 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 local agency 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 local agency for a minimum period of three years from the date of the final voucher.

Recovery of Compensatory Damages

The federal share pertaining to the recovery of compensatory damages should be equivalent to the federal share of the project or projects involved. In cases where local agencies affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents should be credited to the projector projects from which the claim or claims arose.

16.18 REFERENCES

18 USC 1020
https://www.gpo.gov/fdsys/granule/USCODE-2011-title18/USCODE-2011-title18-partI-chap47-sec1020

23 CFR
https://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm

23 CFR 637
http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.7.25

29 CFR 5.7(b)
https://www.law.cornell.edu/cfr/text/29/5.7

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

49 CFR
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49tab_02.tpl

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/federal-aid-contract-prejob-checklist-form201903.pdf

Federal Aid Programming Guide (NS 23 CFR 635A) (Materials and right of way delays)
https://www.fhwa.dot.gov/construction/contracts/0635asup.cfm

FHWA Technical Advisory, Construction Contract Time Determination Procedures, TA 5080.15
https://www.fhwa.dot.gov/construction/contracts/t508015.cfm

Form FHWA 1273 Contract Provisions
https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf

HQ Division of Local Assistance Training for Local Agencies Web page
https://dot.ca.gov/programs/local-assistance/other-important-issues/training

HQ Division of Local Assistance Web page
https://dot.ca.gov/programs/local-assistance

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 Assistance Structure Representative Guidelines
https://dot.ca.gov/programs/construction/publications

Partnering with Caltrans
https://dot.ca.gov/programs/construction/partnering

State of California DOT, Quality Assurance Program Manual for use by Local Agencies, December 2008
https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/reports/qap-manual.pdf

Technical Advisories (TA): T 45401 Equipment Rental Rates
https://www.fhwa.dot.gov/programadmin/contracts/ta45401.cfm

US DOT, FHWA, Contract Administration Core Curriculum
https://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm

Washington State Department of Transportation, Local Agency Guidelines
http://www.wsdot.wa.gov/localprograms/LAG/

Chapter 17 **Project Completion**

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FIGURES

Figure 17-1: Project Completion 1

EXHIBITS

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 17-A: Cover Letter and Federal Report of Expenditures Checklist
Exhibit 17-B: Final Inspection of Federal-Aid Project (FHWA Form 1446C)
Exhibit 17-C: Final Inspection Form
Exhibit 17-D: Federal-Aid Final Invoice
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-G: Materials Certificate
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-N: Environmental Enhancement and Mitigation (EEM) Program Final Report of Right of Way Expenditures
Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change

Chapter 17 **Project Completion**

17.1 INTRODUCTION

This chapter covers the topic of project completion. It is to be used mainly as a guide for administration of federal-aid contracts by local agencies. Each Resident Engineer 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.

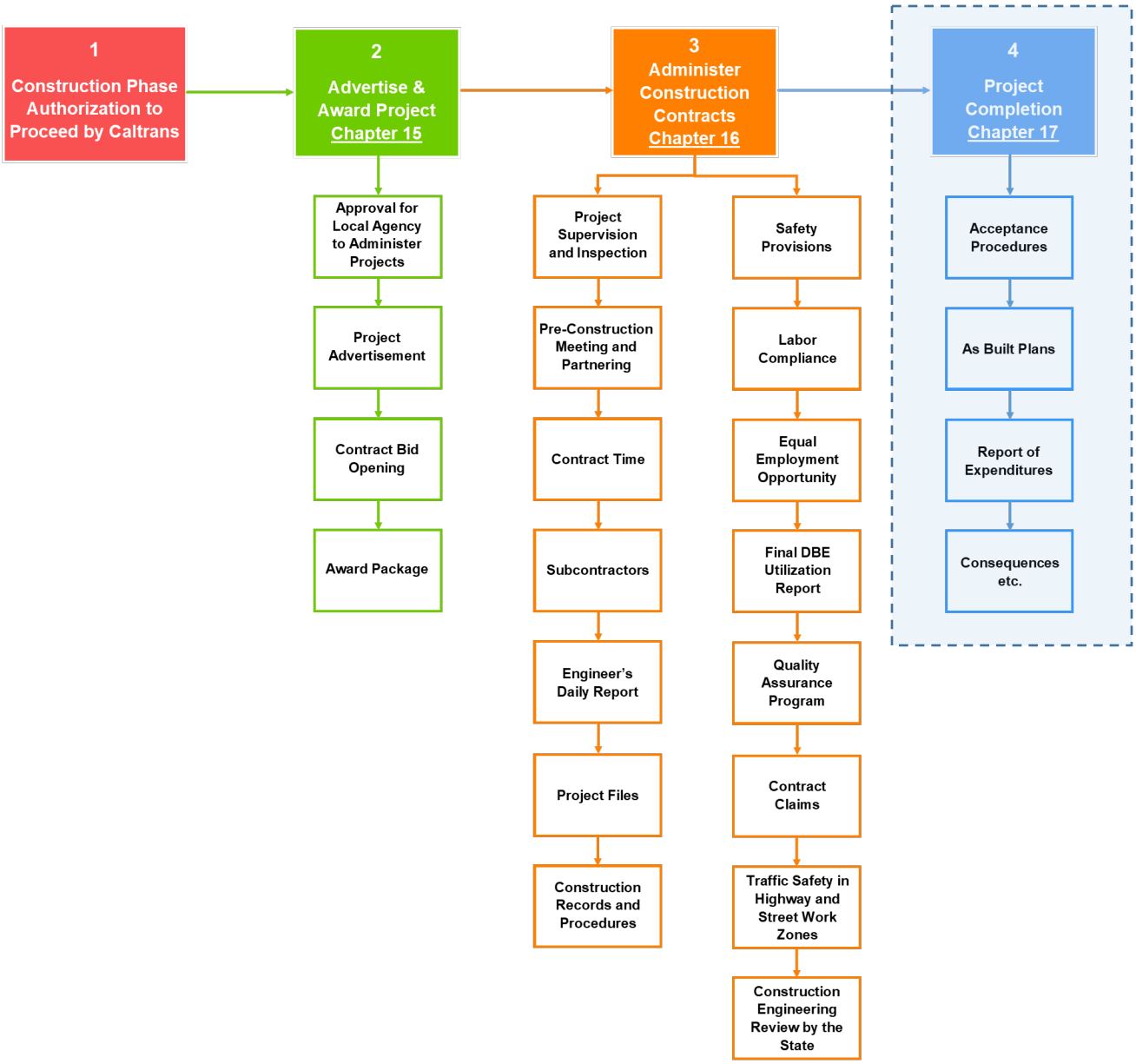

Figure 17-1: Project Completion

This chapter, LAPM Chapter 15: Advertise and Award Project, and LAPM Chapter 16: Administer Construction Contracts of the Local Assistance Procedures Manual (LAPM) are for the use of local agencies, which administer federal-aid projects under a Local Agency-State Agreement. These three chapters cover general contract administration procedures.

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 Definitions of Terms

Delegated Project – A lower risk project not selected as Project of Division Interest project, for which Caltrans has authority for all aspects of a federal-aid project except those activities which may not be delegated by federal law (requiring Federal Highway Administration [FHWA] approval). Prior to September 2007 these projects were referred to as State-Authorized projects defined by set criteria (rather than risk) such as non-Interstate 3R projects, Interstate construction projects under $1 million, non-NHS projects, and so forth. Over 99% of local assistance projects are delegated in which Caltrans or the local agency has approval authority for most project level activities.

EEO – Equal Employment Opportunity.

Final Inspection Form –

Exhibit 17-C: Final Inspection Form is used by the local agency to complete the final inspection of all projects and is utilized for the vast majority of projects.

Exhibit 17-B: Final Inspection of Federal-Aid Project is used by Caltrans to complete the final inspection of NHS Projects subject to FHWA Full Oversight (i.e., PoDI projects requiring FHWA signature).

Final Invoice – Invoice listing final cost incurred for a particular phase of the project, i.e., Preliminary Engineering, Construction Engineering, Right of Way, or Construction. The District Local Assistance Engineer (DLAE) is required to verify project completion and approve payment before forwarding the final invoice to Local Programs Accounting (LPA). For example see Exhibit 17-C: Final Inspection Form, and refer to LAPM Chapter 5: Invoicing for instructions.

Projects of Division Interest (PoDI) – Projects where the CADO has retained one or more 23 U.S.C. 106 (c) responsibilities. These are projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives or advancing key initiatives. Major Projects are always designated as PoDIs.

Progress Invoice – Periodic billing invoice by local/regional agencies for reimbursement of costs on on-going contracts.

Report of Expenditures – Collectively refers to various final report documents.

17.3 Final Inspection Procedures for Federal-aid Projects

Local agencies shall document fulfillment of environmental mitigation commitments for final inspection Report of Expenditures and ultimate accountability as follows:

- **Categorical Exclusion (CE)** – Local agency shall provide the DLAE with a list of environmental mitigation commitments when requesting CE determination.

- **Environmental Assessment (EA)** – Local agency shall summarize when environmental mitigation commitments in the draft Environmental Assessment and provides an Environmental Commitments Record (ECR) to the DLAE in order to document fulfillment of environmental mitigation commitments.
- **Environmental Impact Statement (EIS)** – Local agency shall summarize environmental commitments in the draft Record of Decision (ROD). In addition, the local agency provides an Environmental Commitments Record (ECR) to the DLAE in order to document fulfillment of environmental mitigation commitments.

In addition, they shall acknowledge any long-term commitment to maintenance of those mitigation measures.

Delegated Projects

Final Inspection by Local Agency

The local agency representative or his/her staff shall make the final inspection using Exhibit 17-C: Final Inspection Form. The local agency representative or staff performing final inspection or signing the Final Inspection Form shall be one with authority for accepting the completed contract on behalf of the local agency and authorizing final payment to the contractor, as well as directing corrective action(s) to be undertaken by the contractor.

The inspection of work performed by contract shall be made sufficiently in advance of contract acceptance to allow time for possible corrective action. Neither FHWA nor Caltrans inspection is required at this time. However, timely submittal of Exhibit 17-C may provide an opportunity for Caltrans inspection prior to acceptance of the contract.

Upon successful completion of all corrective actions undertaken by the contractor and completion of all additional work required for the authorized project, but prior to contract acceptance, the local agency representative should complete items 1-10 of the Final Inspection Form and forward it to the Caltrans DLAE.

Project Verification by DLAE

The DLAE or his/her staff depending on the district organization and type of project, will review the job site and verify that the project was constructed in accordance with the scope and description of the project authorization document. Any safety, design or construction deficiencies noted should be immediately brought to the attention of the local agency for correction or resolution. Upon satisfactory review by Caltrans staff, the DLAE shall ensure that Items 1-10 have been completed by the local agency prior to completing Items 11-13 on the Final Inspection Form. The DLAE shall retain the Final Inspection Form and send a copy to the local agency for the Report of Expenditures.

Projects of Division Interest Projects

Final inspection of significant NHS projects shall be in accordance with written construction administration procedures discussed in LAPM Chapter 15: Advertise and Award Project, Section 15.3: Approval for Local Agency to Administer Projects. All Projects of Division Interest projects shall be in accordance with the following:

Final Inspection by Local Agency

Projects of Division Interest projects will require a final inspection by the FHWA. To initiate this inspection, the local agency will make the final inspection as described above for Delegated projects, accept the construction contract and submit the signed Exhibit 17-C: Final Inspection

Form and reduced plan cover sheet and typical cross sections to the Caltrans Oversight Engineer (OSE) immediately upon completion of all work in the project authorization.

Project Verification by OSE

Upon receipt of the Local Agency Final Inspection Form, the OSE shall verify that the project has been completed as described in the plans and specifications. The OSE shall then transmit the necessary documents to the FHWA Transportation Engineer.

Final Inspection by FHWA

The final inspection by FHWA will be coordinated by the OSE in accordance with Caltrans Oversight Field Engineer Guidelines.

The DLAE shall receive from the OSE the Report of Expenditures prior to the DLAE processing the local agency's final project invoice.

17.4 "As-Built" Plans

On locally administered contracts the resident engineer shall 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 shall 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 Resident Engineer (R.E.), the Construction Contract Acceptance date, and the Contract Number. These shall 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 shall be returned to the local agency after microfilming, if requested. "As-Built" corrections for the roadwork portion of the plans should be recorded in accordance with local agency requirements.

17.5 Final Report of Expenditures

The local agency is responsible for preparing and submitting to the DLAE the final report documents which collectively constitute the Final Report of Expenditures. 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 Final Report of Expenditures 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 17.6: Consequences for Non-Compliance.

The Final Report of Expenditures must be signed by the public employee in responsible charge of the project.

Federal-aid Projects

For federal-aid projects, the Final Report of Expenditures includes, as a minimum, the following documents:

- Exhibit 17-A: A Cover Letter and Federal Report of Expenditures Checklist - Identifies all mandatory documents to be included in the Final Report of Expenditures. This checklist shall be submitted by the local agency with the report of completion. Copies of all documents included in the report of expenditures shall be maintained on file at the local agency for any future audits as specified in the Master Agreement and Program Supplement, and to serve as verification that contractor labor requirements were met.

- Exhibit 17-C: Final Inspection Form - This form when completed by both the local agency and the DLAE or OSE (SHS projects) shall be included as part of the Final Report of Expenditures for all projects.
- Final Invoice – Final Invoice should conform to the format in Exhibit 17-D: Federal–Aid Final 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 15.7: 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 the local agency. Once claims are settled, the final invoice and a final detail estimate shall be submitted to the DLAE as part of the Final Report of Expenditures.
- 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 shall 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 shall be completed and signed, and they shall be in conformance with the requirements in LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises. The completed forms shall 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 shall 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-G: Materials Certificate – This certificate is to be included in the project files upon completion of the project. Exceptions to the certification should be documented in project records in summary form along with explanations and attached to the certificate, including change orders to accept nonconforming materials.
- Exhibit 17-H: Cover Letter and Final Report of Expenditures Checklist (PE only) – This form shall be submitted (in place of Exhibit 17-A) by the local agency to the DLAE for projects authorized for Preliminary Engineering (PE) only and not required to advance 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 the Engineering Service Center Division of Structures, 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 a Report of Completion of Right of Way Expenditures, (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 shall 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 shall perform a review of these documents for correct format and obvious errors and/or omissions. Upon verification that the Final Report of Expenditures is complete, the DLAE shall forward it to LPA for processing.

State-Funded Projects

For state funded projects, in state transportation programs such as the Environmental Enhancement and Mitigation (EEM) Program, the local agency shall 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 Federal Report of Expenditures shall 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, except for EEM projects, forward the original plus two copies to the Headquarters Division of Local Assistance.

For EEM projects, the DLAE will forward the original plus two copies of the Final Project Expenditure Report, to Local Programs Accounting, with a copy to the EEM Program Manager in the HQ Division of Local Assistance. Use Exhibit 17-N: EEM Programs Final Report of Right of Way Expenditures for projects involving the acquisition of real property or rights thereto with funds direct deposited into an escrow account. In this case, the DLAE will not verify project completion until the close of escrow is completed and the recordation of both the grant deed and the Agreement Declaring Restrictive Covenants (ADRC). A copy of the recorded grant deed(s) and the original ADRC will be attached to the final report of right of way expenditures.

17.6 Consequences for Non-Compliance

Sanctions may be imposed by Caltrans on agencies that are found in noncompliance with the reporting requirements listed above in Section 17.5: Final Report of Expenditures. The types of sanctions are further discussed in LAPM Chapter 19: Oversight and Process Reviews.

If there is a discrepancy between the Final Invoice and Final Detail Estimate, the agency 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, LPA shall bill the agency for all expenditures made on this project. If the local agency does not pay the accounts receivable bill within thirty (30) days, LPA shall initiate action with the State Controller to offset funds due the local agency.

If the local agency has previously included in their billing, items not reimbursable by the FHWA or over-billed progress payments that exceed the Final Estimates, the local agency shall be billed for the overpayment. The local agency shall pay the state's accounts receivable bill within thirty days or LPA shall initiate action with the State Controller to offset funds due the local agency. The same policy shall apply to those recommendations from Process Review Reports on applicable findings or the improper utilization of Disadvantaged Business Enterprises.

17.7 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 Part 26
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Caltrans Construction Manual, Chapter 5, Section 5-1, "Project Records and Reports"
https://dot.ca.gov/-/media/dot-media/programs/construction/documents/policies-procedures-publications/construction-manual/sec5-1.pdf

Caltrans Construction Manual, Chapter 6, Section 6-1, "Sample Types and Frequencies," 6-2, "Acceptance of Material and Sampling Methods," and 6-3, "Field Tests"
https://dot.ca.gov/programs/construction/construction-manual

United States Code, Title 23 Chapter 1, Section 121, "Payment for States Construction"
https://www.govinfo.gov/content/pkg/CFR-2012-title23-vol1/pdf/CFR-2012-title23-vol1.pdf

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

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

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

Chapter 18 **Maintenance**

18.1 General Requirements

Section 116 of Title 23, United States Code (U.S.C.) 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 agency 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.

Section 116 of Title 23, United States Code (U.S.C.) also provides that if the federal authorities find that any completed project is not properly maintained such fact shall be called to the attention of Caltrans. If the project is under local agency jurisdiction and is not put in proper condition within 90 days after written notification by Caltrans, approval of further federal-aid projects for the agency will be withheld until the project is put back in proper condition.

Section 823.5 of the Streets and Highways Code (S&H Code) outlines Caltrans' authority to perform the required maintenance should the agency having the responsibility fail to do so. In such case, Caltrans shall notify the State Controller of their maintenance expenditures on such street or highway. Then the State Controller shall 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).

Local agency 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 shall be removed, eliminated, or decreased in effectiveness without the prior approval of the governing entity of the jurisdiction in which the project is located (see LAPM Chapter 11: Design Guidance, Section 11.4: Standard Specifications).

18.2 Bridge Inspection

Bridges located on public roads, under the jurisdiction of a local agency, 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. A local agency 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 local agency's written request. The local agency 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 shall 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 or not 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.

Local agency compliance with maintenance requirements will be verified through program and process reviews. District Local Assistance Engineer (DLAE) should perform maintenance reviews if/ when requested, when deficiencies are identified, because of prior experience with an agency, or as part of program/process reviews. Exhibit 18-A: Maintenance Review Checklist is used for the maintenance review.

All deficiencies shall be discussed with the local agency 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 S&H Code 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 S&H Code 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 and contact 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 (DRSI).

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 (see Section 2121 of the S&H Code). 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 Section 2104 of the S&H Code.

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. Caltrans, in order to prepare the monthly certificate, 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 on the basis of vehicular registration.

For the purpose of certification to the State Controller, it has been established that a maintained county road must meet all of 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 S&H Code 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 agency'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 agency 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 the agencies, 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

Section 2121 of S&H Code 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 certifications 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 into.

Example: County A and County B have previously agreed through due process that a certain boundary road now maintained and claimed by County B shall, after the 30th of June is 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. Section 34333 of the Government Code 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 shall 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 are: 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 DRSI 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 his/her use in calculating the Section 2103 of S&H Code 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 DRSI to the maintained mileage of the counties concerned. Upon receipt of assurance from headquarters the 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

Local agencies 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 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. Local agencies may submit Functional Classification Change Requests to their DLAE year round. Functional Classification Guidelines provide the procedure for submittal of appropriate documentation, which can be found at: https://dot.ca.gov/programs/research-innovation-system-information/highway-system-engineering-products-data.

The DLAE reviews and forwards the information to the Highway System Engineering (HSE) Branch at Caltrans Headquarters. The FHWA reviews and provides final approval for functional classification change requests by stamping and signing the CRS maps.

18.5 References

California Manual on Uniform Traffic Control Devices (CA MUTCD)
https://dot.ca.gov/programs/traffic-operations/camutcd

Caltrans Maintenance Manual
https://dot.ca.gov/programs/maintenance/maintenance-manual

Collier Burns Act
http://www.cahighways.org/chrphas4.html

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

Section 34333 of the Government Code
http://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=GOV&tocTitle=+Government+Code+-+GOV

Sections 2104, 2121, 823.5 of the Streets and Highways Code (S&H Code)
http://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=SHC&tocTitle=+Streets+and+Highways+Code+-+SHC

Section 116 of Title 23, United States Code (U.S.C.)
http://uscode.house.gov/browse/prelim@title23&edition=prelim

Chapter 19 **Oversight and Process Reviews**

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EXHIBITS

Exhibits applicable to this chapter can be found at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 19-A: Pre-Construction Review Checklist
Exhibit 19-B: Mid-Construction Review Checklist
Exhibit 19-C: Post-Construction Review Checklist

Chapter 19 **Oversight and Process Reviews**

19.1 INTRODUCTION

For purposes of this chapter, Oversight is defined as the act of ensuring that the federal highway program is delivered in accordance with applicable laws, regulations and policies. Oversight is the compliance or verification component of the joint Federal Highway Administration (FHWA)/Caltrans stewardship activities. Narrowly focused, oversight activities ensure that the implementation of the Federal Aid Highway Program (FAHP) is done in accordance with the applicable laws, regulations, and policies. Broadly focused, oversight activities enable both agencies (the 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 both National Highway System (NHS) and non-NHS federal-aid projects.

Project oversight is used to evaluate all aspects (which primarily emanate from the Local Assistance Procedures Manual (LAPM)) of the Caltrans oversight and management of local agency 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 local agencies administering federal-aid projects. A second major goal of Caltrans oversight is to maintain a continual process of updating and improving local assistance procedures which will lead to a more efficient and effective federal-aid as well as state funded local assistance program.

19.2 LOCAL AGENCY RECORDS AND DOCUMENTATION

Upon request, local agencies need to 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. As stated in the Master Agreement, project records are to be retained by local agencies for a period of three years from state payment of the final voucher, or a four-year period from the date of the final payment under the contract, whichever is longer.

19.3 OVERSIGHT AND PROCESS REVIEW METHODS

Caltrans Oversight and Process Reviews

As outlined in LAPM Chapter 1: Introduction and Overview and LAPM Chapter 2: Roles and Responsibilities, Caltrans provided local agencies with broad delegation, latitude and responsibility for developing their federal-aid projects. Caltrans will provide the necessary review and approval for local agency administered federal-aid projects, of which Caltrans has assumed responsibility, to ensure compliance with all federal requirements. Reviews generally include observations and findings, which typically result in corrective actions that need to be implemented by the Division of Local Assistance. As resources permit, Caltrans achieves oversight by:

- Preparing, prioritizing, updating and implementing an Annual Process Review Work Plan with the assistance, direction, and oversight of the Division of Local Assistance Oversight/Process Review Committee.
- Providing technical assistance and oversight, as needed or requested, of bridges, overcrossings, and other local agency structures.
- Performing reviews of Contract Award Packages, submitted by local agencies after preliminary engineering and construction contract award, verifying contractor local agency and contractor compliance with Disadvantaged Business Enterprise (DBE) requirements.
- Performing qualitative and quantitative reviews of all local agency project invoices requesting reimbursement to ensure the claimed costs are allocable, allowable, and reasonable prior to reimbursement by Caltrans and FHWA.
- Conducting prioritized and focused Process Reviews, Plans, Specifications and Estimate (PS&E) Reviews; and Maintenance Reviews; observations and findings typically result in corrective actions that need to be implemented by the Division of Local Assistance.
- Performing Project Verification on all projects at or after final inspection by local agencies.
- Performing consultant contract audits, local agency indirect cost allocation plan audits; and external special audits as needed.
- Participating in formal program audits.
- Performing Civil Rights (Americans with Disabilities Act, Equal Employment Opportunity, Disadvantaged Business Enterprise and Title VI) compliance reviews of local agencies in conjunction with Caltrans Office of Business and Economic Opportunity per the Joint Stewardship Agreement.
- Performing construction oversight of unusual and/or special local agency projects as resources permit.
- Maintaining a database to identify, assimilate, and manage observations and findings from process reviews and other reviews performed by Caltrans, FHWA, and other governmental agencies.
- Analyzing observations and findings to determine needed corrective actions. Observations and findings typically result in corrective actions that need to be implemented by the Division of Local Assistance.

The goal of all the foregoing oversight and reviews, including prioritized process reviews, is for Caltrans to ensure and demonstrate that requirements imposed by the Federal and State governments are being met and that proper procedures are being performed by the local agencies administering federal-aid projects.

Other Caltrans Guidance and Assistance

Caltrans assists and provides guidance to local agencies with federal-aid projects by:

- Providing local agencies with accurate federal-aid project development procedures and program guidelines.
- Providing local agencies with a sample Quality Assurance Program for the sampling and testing of materials and the procedures used in the construction of the local agency project.

- Providing quality assurance guidance and measures to local agencies such as the Quality Assurance Program (QAP) Manual for use by local agencies which was developed to help local agencies with their Quality Assurance Programs.
- Using Independent Assurance Caltrans personnel to certify local agency material samplers, testers, and laboratories when Caltrans test methods are used.
- Establishing the Local Oversight Action Plan (LOAP) team consisting of federal, state and local agency members to jointly prepare and implement changes and improvements to the Local Assistance Procedures Manual, and other local agency guidance, as well as identifying local agency, Caltrans, and FHWA oversight roles and responsibilities.
- Producing Office Bulletins to quickly implement regulatory and other changes to the Local Assistance Procedures Manual and Local Assistance Program Guidelines.
- Preparing the Caltrans Oversight Information Notice (COIN); alerting local agencies to new and innovative practices and/or procedures; and best practices; along with findings, areas or items of concern or non-compliance.
- Providing continuous federal-aid project training in consultant selection, contract procurement, administration, and closeout.
- Providing training such as the Resident Engineer's Academy and the Federal-aid Series for local agency staff, consultants, and related professionals.
- Hosting statewide meetings and conferences, such as the City-County-State-Federal Cooperative Committee meeting, to receive local agency and Caltrans district feedback.

The purpose of the foregoing efforts is to maintain a continual process of updating and improving local assistance procedures which will, again, lead to a more efficient and effective federal-aid and state funded local assistance program.

FHWA Oversight and Process Reviews

FHWA (California Division) verifies Caltrans and local agency compliance with federal regulations via annual program and process reviews for Delegated as well as Projects of Division Interest projects of which Caltrans retains certain responsibilities and approval authorities as jointly determined by Caltrans and FHWA. The California Division 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:

- **Construction Contractor Payment Reviews**

  The purpose of these reviews is to evaluate and test the controls that are related to the financial aspects of construction contractor payments for local agency federal-aid projects. The review may include preparation of the project cost estimate, approval of and payment of monthly cost estimates, the preparation and processing of change orders and the completion, and final acceptance of the work.

- **Financial Integrity Review and Evaluation (FIRE)**

  Construction Contractor Payment Reviews, Improper Payment Reviews, Inactive Obligation Reviews, and other reviews may be performed to fulfill, in part, the requirements of the FIRE Program established via FHWA Order 45601 b. 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. Construction Contractor Payment Reviews are one of the tools that can be used by FHWA in support of the FIRE.

- **Process Reviews of Selected Local Agency Federal-aid Projects**
  Based upon random selection of local agencies or local agency federal-aid projects, FHWA performs process reviews of the federal-aid program, and local agency federal-aid projects to establish a confidence level that verifies local agencies and their federal-aid projects fully comply with federal and state laws and regulations.
- **Process Reviews of Specially Funded Federal-aid Projects**
  Local agency specially funded projects frequently have unique requirements which may require special implementation. Such projects can be evaluated by FHWA to both measure compliance and the results. One example is the American Recovery and Reinvestment Act (ARRA) in 2009 which was of limited duration and had as one of its primary purposes for FHWA to expeditiously assist in the creation of jobs in the construction industry by rebuilding the transportation infrastructure.
- **Program and/or Process Reviews of Caltrans/Local Agency High-Risk Areas Based Upon Risk Analysis**
  FHWA identifies high risk areas in the federal-aid process and program. Using the results of the risk analysis, FHWA may choose to perform program and/or process views of these high-risk areas within Caltrans, local agencies, or local agency projects.
- **FHWA's Verification Process**
  Used for project authorizations/final vouchers; retained project-level approvals; Projects of Division Interest project approvals; and inactive obligations.

  In addition to the foregoing reviews conducted by the California Division, process reviews of local agency federal-aid projects and the Caltrans Division of Local Assistance are occasionally conducted by the FHWA Headquarters National Review Team, such as occurred in 2009/10. FHWA reserves the right to perform reviews of all federal-aid programs and projects at any time, while maintaining a focus on efficient project delivery. As previously mentioned, to ensure compliance the reviews may include projects or programs with unique features and high-risk elements as well as those with unusual circumstances.

Oversight and Reviews by Other Federal Agencies

The Department of Transportation Office of Inspector General (OIG) and the federal General Accounting Office (GAO) may perform reviews of local agency federal-aid projects as well as reviews of the Caltrans Division of Local Assistance, such as occurred in 2009/10. Much of their impetus and concerns were focused primarily on ARRA funded local agency projects but other local agency federal-aid projects were also reviewed. These actions/reviews also result in observations and findings which typically result in corrective actions that need to be implemented by the Division of Local Assistance.

Oversight Using Mini Process Reviews

In addition to the methods outlined above, projects may be evaluated by mini process reviews on a less formal basis such as random sampling or spot checking of project scope documentation, PS&E packages and so forth. The difference between a mini process review and regular process reviews is that the mini process reviews are usually conducted over one or

several projects and can be conducted by either Division of Local Assistance headquarters staff, DLAE staff, or other Caltrans/FHWA personnel concerned with local assistance projects.

Another form of a mini process review is through the distribution of questionnaires to evaluate specific procedures used for federal-aid project activities. Responses from the questionnaire can be used as one criterion for determining if agencies will need to be reviewed through the more formal process review method approved by the Process Review Committee.

Results from the mini process reviews will be reported to the Process Review Committee and FHWA in the same manner as regular process reviews.

Other Oversight Methods

As previously mentioned, other oversight methods, in addition to process reviews, consist of technical, quality assurance, quantitative, cost, verification, audit, civil rights, and special funded project reviews. However most of these reviews incorporate various aspects and procedures of the process review.

19.4 OVERSIGHT/PROCESS REVIEW COMMITTEE

An Oversight/Process Review Committee has been established to guide and approve the yearly Oversight/Process Review Monitoring Plan. The committee shall:

- Review for consistency and approve recommendations from the oversight reports developed by the review teams.
- Resolve any problems which occur with the oversight procedures.

The Oversight/Process Review Committee shall consist of appropriate headquarters Division of Local Assistance senior level management and Process Review Engineers. Others may be invited to participate depending on the items or areas to be covered.

This could include but not limited to:

- Structures local assistance representative
- Right of Way local assistance representative
- District Local Assistance Engineer (DLAE) representative(s)
- FHWA representative(s)
- Local agency city/county representative(s)
- Metropolitan Planning Organization/Regional Transportation Planning Agency representative(s)

A yearly monitoring plan, using a risk based approach, must be developed by the Process Review Engineer (PRE) with adjustments made to it each July by the Oversight/Process Review Committee. The plan must outline the topics, schedule, method and goals desired for the next years' oversight. A copy of the draft monitoring plan must be sent to FHWA for review and comments prior to submittal to the Review Committee. The Review Committee must approve the schedule for the next year based on their evaluation of all process reviews completed within the last year.

The PRE must select team members for each topic based on recommendations from the Review Committee and who would be appropriate to review the topic selected. Agencies to be reviewed will be based on recommendations from DLAEs and headquarters Area Engineers.

The PRE is accountable for developing the format for the review plan (i.e., objectives, scope, and approach), incorporating other team members' recommendations into the plan and preparing the final plan.

Reviews of a local agency's files and processes can take one hour or all day. It can involve the review of one project, several projects or a general review of the local agency's files. Each approved review will be different based on the topic to be reviewed. Local agencies will be notified in advance of the topic of the review and the estimated time required for the review.

The DLAEs will schedule review team meetings with the selected local agencies in their district.

19.5 FINDINGS/RECOMMENDATIONS

The main objective of oversight and process review reports is to provide Caltrans and FHWA management documented information and recommendations regarding the local assistance federal-aid and State-funded programs.

Other objectives include:

- Assurance that resultant products are of an acceptable quality
- Identify weakness, deficient processes or procedure requiring improvement
- Provide specific recommendations to correct deficiencies or improve processes
- Documentation of existing deficiencies for future comparison
- Evaluation of benefits derived from previous recommendations
- Identify innovative method adopted as a result of new delegation for possible publication and distribution
- Follow through to implementation

Final Report

Upon completion of the local agencies reviews, a review report must be prepared by the PRE or team leader (with input from the team members) and submitted to the Review Committee for approval. Findings and recommendations made by the Caltrans' review team must be included in the report. The Review Committee must review the report and either reject it with comments for corrections, or approve the report and recommendations. If sanctions are recommended they must be applied immediately (see LAPM Chapter 20: Deficiencies and Sanctions). Once the committee has approved the report it is considered final. Copies of all final reports must be forwarded to FHWA for information. The final report must include as a minimum:

- Objectives, scope, and approach used
- Findings – noting significant differences between intended and actual processes, and citing both strong and weak points in process and procedures
- Recommendations for each and every finding, and identify specific items or actions to correct or minimize deficiencies
- Action taken/follow-up

Based on the reviews, assurances can be established that engineered processes and procedures are being implemented as intended, and local agencies are producing the desired product. Synopsis of each report, approved by the Review Committee, will also be posted on the Division of Local Assistance Internet Homepage at: https://dot.ca.gov/programs/local-assistance/reports.

The synopsis of the report will contain the minimum information, from above, but will not contain the names of the individual local agencies.

Corrective Actions

Based on the findings and recommendations of the review, Local Assistance procedures may need to be improved, modified and/or updated. Changes to the procedures will be made with Local Program Procedures (LPPs) which are changes to the Local Assistance Procedures Manual or Local Assistance Program Guidelines. Office Bulletins are also issued as temporary, expedient changes to these two manuals. Major improvements or changes may need involvement or review by a quality improvement team depending upon complexity and needed technical knowledge. All project deficiencies must be brought to the attention of the local agency during the oversight/process review. The local agency will be expected to take appropriate action immediately to correct the deficiencies. For unrecoverable project deficiencies which make portions or all of the project ineligible, the corrective action will include the recovery of the appropriate federal or State funds through the issuance of a revised E-76.

19.6 Construction Oversight Program

For locally administered federal-aid highway projects off the State Highway System, construction oversight reviews will be performed by Caltrans Local Assistance Construction Oversight Engineers (COEs). District Local Assistance Engineer (DLAE) staff may participate in the reviews, if available.

Types of Reviews

The purpose of construction oversight reviews is to verify local agency 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 a local agency 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 local agency personnel
- Per request by the local agency or DLAE for additional assistance

During preliminary construction reviews, the COE will meet with the local agency's construction contract administration team and discuss project record documentation requirements using Exhibit 19-A: 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 local agency's resident engineer and review the project records. Exhibit 19-B: Mid-Construction Review Checklist will serve as the basis for this review. Any major deficiencies will be identified and the local agency 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 local agency 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. Exhibit 19-C Post-Construction Review Checklist will serve 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 local agency will be notified of the deficiencies (see Review Findings below).

Review Findings

Results of the construction oversight reviews will be forwarded to the local agency and the DLAE within two weeks. Any major deficiency identified during a review will require development of a corrective action plan by the local agency in consultation with the District within 30 days of receipt of the major deficiency notification, unless the agency disagrees with the major deficiencies identified and appeals the decision as discussed below. As defined in LAPM Chapter 20: Deficiencies and Sanctions 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 local agency will take to address each major deficiency noted. Corrective actions may include modifications of local agency 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 local agency.

Certain deficiencies may be unrecoverable as described in LAPM Chapter 20.

In the event the local agency disagrees with the major deficiencies identified, the local agency will have 30 days from receipt of the major deficiency notification to submit their written request for appeal in accordance with LAPM Chapter 20, Section 20.4: Local Assistance Dispute Resolution Process. If the appeal is denied, the local agency will have 15 days from receipt of the decision to submit their corrective action plan.

Roles and Responsibilities

The following procedures, including roles and responsibilities, will be used to perform construction oversight on federal-aid projects being administered by local agencies off the SHS.

Construction Oversight Engineers

- Coordinate construction oversight reviews with local agencies.
- Provide construction oversight review forms to the local agency prior to reviews to expedite the review process.
- Identify projects subject to preliminary, mid-construction and/or post construction reviews utilizing the above guidelines.
- Consult with the construction oversight program coordinator on selecting projects for preliminary and mid-construction reviews.
- Perform construction oversight reviews through review of project records and discussions with local agency's contract administration staff.
- Keep DLAE apprised of oversight reviews so they may participate, if available.
- Provide review findings to the local agency, construction oversight coordinator, and DLAE. Review findings are to be sent to the local agency within two weeks.
- Identify any major deficiencies that will require a local agency corrective action plan. Issue a letter to the local agency notifying them of the major deficiencies requiring corrective action with copies sent to the construction oversight coordinator and DLAE.
- Consult with the DLAE regarding major deficiencies and corrective action plans.
- Monitor local agency corrective action plan development and implementation. Ensure the Construction Oversight Database is populated and kept up-to-date with major deficiency information and related corrective action plan information.
- Assist the DLAE with quantification of any sanctions related to unresolved major deficiencies.
- Participate in construction phase reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and Investigations, etc.). Assist in formal response to project specific findings from these reviews and audits on Caltrans behalf.

- Assist local agencies and DLAE staff with questions that may arise concerning construction related issues.
- Provide guidance and training to local agencies and DLAE staff concerning construction contract administration, including federal and state requirements.
- Assist DLAE and DLAE staff with review and approval of complex change orders and review of complex dispute issues.
- Provide weekly update to the construction oversight program coordinator that identifies the major work performed (e.g., local agency project reviewed, type of review, other project reviews, major deficiency notification letters, training delivered, analysis of complex change orders or dispute issues etc.).
- Attend monthly construction oversight meetings to discuss programmatic issues concerning construction oversight, sharing experiences, and concerns.

Construction Oversight Program Coordinator

- Maintain Construction Oversight Database, monitoring for consistency and accuracy utilizing weekly newsletters and major deficiency notification letters.
- Issue quarterly report for construction oversight (programmatic findings) to FHWA Division Administrator, DLA division chief, DLAEs and COEs. Report to include review metrics, common problem areas, recommendations for improvements, programmatic actions/improvements taken (e.g., policy, procedures and training), performance measure trend analysis to establish first year baseline and subsequent performance, and sanctions taken.
- Issue quarterly report for construction oversight (project specific findings) to FHWA Division Administrator, Division of Local Assistance (DLA) division chief, DLAEs, and COEs. Report to include district, project number, local agency, review type, review date, reviewer, major deficiencies identified, notification letter date, local assistance dispute resolution referral date, corrective action plan submittal date(s), approval date of corrective action plan, status of major deficiency resolution, sanction description, and sanction amount.
- Provide input to the construction oversight engineers on projects subject to preliminary and mid-construction reviews.
- Analyze project review findings to identify common problem areas where modifications to policies, procedures, or training related to construction oversight may be needed.
- Assist in development and delivery of new or revised policies, procedures, and training related to construction oversight.
- Participate in construction phase reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and Investigations, etc.). Assist in formal response to project specific and programmatic findings from these reviews and audits on Caltrans behalf.
- Hold monthly meetings with construction oversight engineers to discuss programmatic issues with construction oversight as a means to maintain statewide consistency and identify common concerns.
- Perform construction oversight engineer duties as the need arises or in the absence of a COE.
- Assist DLA division chief with issues referred to the Local Assistance Dispute Resolution Process.

District Local Assistance Engineer

- Provide representation at construction oversight reviews, as available.
- Discuss major deficiency notification letter and corrective action plan requirements with the COE.
- Perform DLAE role in Local Assistance Dispute Resolution Process.
- Issue sanctions on projects resulting from unresolved major deficiencies.

19.7 A&E Oversight Program

The Architectural and Engineering (A&E) Oversight Branch is responsible for the oversight of consultant contracts procured by local agencies complying with federal regulations 23 Code of Federal Regulations (CFR) 172 and 23 United States Code (USC) 112, and state regulations California Government Code 4525.

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 may participate in the reviews, if necessary.

Types of Reviews

The purpose of A&E consultant contract oversight reviews is to verify local agency compliance with federal and state consultant contract administration requirements. A risk-based approach has been identified by the A&E branch to aid the local agencies with compliance that includes requiring agencies complete and submit the 10-C at http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C 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 perform process reviews on a sample of contracts for the annual performance measures report.

Although the risk-based approach is the submittal of Exhibit 10-C via the database, a process review may be conducted on projects for reporting purposes and to determine accuracy of Exhibit 10-C information.

Exhibit 10-C Review

The purpose of the Exhibit 10-C database is to provide oversight and guidance to a local agency regarding consultant contract administration on a federal or state funded project prior to the award of the contract. Exhibit 10-C database 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 agencies with a noncompliance history.

The following factors may be used when selecting projects for subsequent review:

- Local agencies with identified deficiencies during an Incurred Cost Audit
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained local agency personnel

- Request by local agency for assistance
- Per request by the local agency or DLAE for additional assistance

During subsequent process reviews, the A&EOE will meet with the local agency's consultant contract administration team and discuss project record documentation requirements using Exhibit 10-C database. 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

Review findings from any subsequent reviews will be forwarded to the local agency and the DLAE within five business days. Any major deficiency identified during a review will require development of a corrective action plan by the local agency in consultation with the District within 30 days of receipt of the major deficiency notification, unless the agency disagrees with the major deficiencies identified and appeals the decision as discussed below. As defined in LAPM Chapter 20: Deficiencies and Sanctions, 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 local agency will take to address each major deficiency noted. Corrective actions may include re-advertising, modifications of local agency 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/state ineligibility notices against the project or local agency.

Certain deficiencies may be unrecoverable as described in LAPM Chapter 20.

In the event the local agency disagrees with the major deficiencies identified, the local agency will have 30 days from receipt of the major deficiency notification to submit their written request for appeal in accordance with LAPM Chapter 20, Section 20.4: Local Assistance Dispute Resolution Process. If the appeal is denied, the local agency will have 15 days from receipt of the decision to submit their corrective action plan.

Roles and Responsibilities

The following procedures, including roles and responsibilities, will be used to perform consultant oversight on federal and state funded projects being administered by local agencies.

A&E Oversight Engineers

- Monitor Exhibit 10-C database.
- Coordinate consultant oversight process reviews with local agencies.
- Consult with the A&E Oversight Program Manager on randomly selecting projects for process reviews.

- Perform consultant oversight process reviews through review of project records and discussions with local agency's contract administration staff.
- Communicate with DLAE of oversight process reviews so they may participate, if available.
- Provide process review findings to the local agency, consultant oversight coordinator, and DLAE.
- Identify any major deficiencies that will require a local agency corrective action plan.
- Issue a letter to the local agency notifying them of the major deficiencies requiring corrective action with copies sent to the consultant oversight coordinator and DLAE.
- Consult with the DLAE regarding major deficiencies and corrective action plans.
- Monitor local agency corrective action plan development and implementation. Ensure the A&E Consultant Oversight Database is populated and kept up-to-date with major deficiency information and related corrective action plan information.
- Assist the DLAE with quantification of any sanctions related to unresolved major deficiencies.
- Participate in consultant phase reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and Investigations, etc.). Assist in formal response to project specific findings from these reviews and audits on Caltrans' behalf.
- Assist local agencies and DLAE staff with questions that may arise concerning consultant contract related issues.
- Provide guidance and training to local agencies and DLAE staff concerning consultant contract administration, including federal and state requirements.
- Assist DLAE and DLAE staff with review of solicitation documents.
- Attend monthly consultant oversight meetings to discuss programmatic issues concerning consultant contract oversight, and share experiences and concerns.

A&E Oversight Program Manager

- Maintain A&E Consultant Oversight Database, monitoring for consistency and accuracy utilizing major deficiency notification letters.
- Issue annual report for A&E oversight (programmatic findings) to FHWA Division Administrator, DLA Division Chief, DLAEs, and A&EOEs. Report should include reviewed metrics, common problem areas, recommendations for improvements, programmatic actions/improvements taken (e.g., policy, procedures, and training), performance measure trend analysis to establish first year baseline and subsequent performance, and sanctions taken.
- Analyze process review findings to identify common problem areas where modifications to policies, procedures, or training related to consultant oversight may be needed.
- Assist in development and delivery of new or revised policies, procedures, and training related to consultant oversight.
- Participate in consultant contract reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and

Investigations, etc.). Assist in formal response to project specific and programmatic findings from these reviews and audits on Caltrans' behalf.

- Hold monthly meetings with A&EOEs to discuss programmatic issues with consultant oversight as a means to maintain statewide consistency and identify common concerns.
- Perform consultant oversight engineer duties as the need arises or in the absence of an A&EOE.
- Assist DLA Division Chief with issues referred to the Local Assistance Dispute Resolution Process.

District Local Assistance Engineer (DLAE)

- Provide representation at consultant oversight reviews, as available.
- Discuss major deficiency notification letter and corrective action plan requirements with the A&EOE.
- Perform DLAE role in Local Assistance Dispute Resolution Process.
- Issue sanctions on projects resulting from unresolved major deficiencies.

19.8 REFERENCES

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

Chapter 20 **Deficiencies and Sanctions**

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Chapter 20 **Deficiencies and Sanctions**

20.1 INTRODUCTION

As outlined in earlier chapters, Caltrans will no longer be involved in most project level reviews and approval activities. The Process Review is now Caltrans primary method of ensuring that federal and state requirements are met (see LAPM Chapter 19: Oversight and Process Reviews). During a Process Review of a local agencies project files or project site, errors and/or deficiencies 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.

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 of project submittals by District Local Assistance Engineers (DLAEs) or Division of Local Assistance Area Engineers.

This chapter is intended to assist local agencies that are involved in developing local assistance projects by providing examples of the deficiencies that have been found in the past and the possible ramifications for those errors or deficiencies. It should be understood that the examples given are by no means all inclusive. The key to avoiding possible sanctions is to follow the procedures outlined in this manual, the Local Assistance Program Guidelines (LAPG), and the Standard Environmental Reference (SER), and if you have any questions to consult your DLAE.

Section 20.4: Local Assistance Dispute Resolution Process of this chapter also provides means for local agency 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 local agencies when they disagree with the decision they receive from a district office.

20.2 DEFICIENCIES

Procedural Deficiencies

A Procedural Deficiency is defined as a finding that a local agency's practices and procedures fail to demonstrate sufficient familiarity for acceptable levels of conformance with procedures and required certifications defined in the LAPM. In addition to jeopardizing federal and/or state funding on completed or ongoing projects, certifications for future projects may be conditioned, or not accepted until the deficiencies are corrected.

Examples of some of the most common procedural deficiencies (found by Caltrans) are:

- Continued submission of Request for Authorization that contains errors and omissions (see LAPM Chapter 3: Project Authorization)
- Continued submission of Preliminary Environmental Study Form that contains errors and omissions (see LAPM Chapter 6: Environmental Procedures)
- Continued submission of Plans, Specifications & Estimate Certifications that contains errors and omissions (See LAPM Chapter 12: Plans, Specifications & Estimate)
- Continued submission of Right of Way Certifications that contains errors and omissions (see LAPM Chapter 13: Right of Way and LAPM Chapter 14: Utility Relocations)

- Continued submission of Local Agency Contract Award Checklist that contains errors and omissions (see LAPM Chapter 15: Advertise and Award Project)
- Failure of the local agency to comply with the Caltrans Disadvantaged Business Enterprise (DBE) program, particularly with regard to policy, utilization of DBEs, monitoring, and reporting (see LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises)
- Not complying with the audit and review process on A&E consultant contracts of $150,000 or more

The following are considered procedural deficiencies on A&E consultant contracts and may jeopardize federal and/or state funding on completed or ongoing projects:

- Did not advertise as required
- Did not re-advertise for required period
- Did not identify all evaluation factors in Request for Qualifications/Request for Proposals (RFQ/RFP)
- Did not identify the weights or values of each evaluation factor in RFQ/RFP
- Method of payment in RFP not consistent with contract cost proposal
- No supporting documentation that all proposals were received within the required time frames (example: proposals not date-stamped)
- No conflict of interest signed by panel members or evidence an appropriate Code of Ethics was followed in accordance with federal requirements
- Profit not negotiated
- No support that cost analysis was performed
- Cost elements not negotiated/evidence of negotiations not maintained
- No prior authorization given for sole source contracts
- Title VI requirements [per Title 23 CFR 172.9 (c)(1)(vi)] revisions needed in contracts (federal funded only)
- DBE requirements [per Title 23 CFR 172.9 (c)(1)(vii)] revisions needed in contracts (federal funded only)

Major Project Deficiency

A Major Project Deficiency is defined as an error of commission or omission, which violates federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project. Examples of some of the most common (found by Caltrans and FHWA) of Major Project Deficiencies (federal) are:

- Failure to initiate an environmental reevaluation following National Environmental Policy Act (NEPA) approval, when changes in the scope of the project are proposed, or when new project environmental impacts surface due to changes in law or investigations, shall result in loss of all or part of the federal funding for the project (see LAPM Chapter 6: Environmental Procedures).
- Failure to fulfill mitigation commitments or adhered to restrictions identified in the approved NEPA document shall result in a loss of all or part of federal funding for the project (see LAPM Chapter 6).

- Right of Way activities in violation of the Uniform Relocation Assistance and Real Properties Policy Act, as amended, can result in all or partial loss of project funding. Project funding losses can result even if there are not federal funds in Right of Way but only in other phases (see LAPM Chapter 13)
- Force Account/Day Labor work, without proper justification, is not reimbursable (see LAPM Chapter 12: Plans, Specifications & Estimate).
- For Emergency Relief (ER) projects, billing for emergency opening but actually doing permanent restoration work can result in a loss of all or part of the federal funding for the project (see LAPG Chapter 11: Emergency Relief).

  In the absence of prior approval documentation, the use of publicly owned equipment, mandatory use of borrow/disposal sites, use of patented/proprietary materials, use of warranty/guaranties, and use of agency-furnished materials shall make all or part of the construction phase ineligible for reimbursement with federal funds (see LAPM Chapter 12: Plans, Specifications & Estimate).
- Failure to submit a Material Certificate shall result in a partial loss of funding for the construction phase. Failure to adequately document and address all exceptions to the certification will result in all or partial loss of reimbursement. Failure to implement an approved materials and testing program for the project will result in the loss of federal funds for the project (see LAPM Chapter 16: Administer Construction Contracts and LAPM Chapter 17: Project Completion).
- Failure to enforce the Contract DBE provisions with regard to utilization or substitution will make all or part of the construction phase ineligible for reimbursement with federal funds (see LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises). This applies to Contracts executed before May 1, 2006 with race-conscious DBE goals.
- Failure to maintain the completed project (roadway and appurtenances constructed with federal funds and/or mitigation sites), or portions of the project shall result in repayment of all or a portion of the federal reimbursement (see LAPM Chapter 18: Maintenance).

Examples of some of the most common (found by Caltrans) Major Project Deficiencies (State) are:

- RTPAs that use Exchange Funds for non-Article XIX purposes or for other than projects will have to return the funds given to them (see LAPG Chapter 18: Optional Federal Exchange and State Match Programs).
- Counties that use Exchange Funds for other the non-Article XIX purposes will have to return the funds given to them (see LAPG Chapter 18).
- On Environmental Enhancement and Mitigation (EEM) projects, reimbursable costs must be invoiced for by the end of the first state fiscal year following the fiscal year, during which funds were allocated by the CTC. Failure to comply will result in loss of the federal reimbursement (see LAPG Chapter 20: Environmental Enhancement and Mitigation).

Unrecoverable Project Deficiency

An Unrecoverable Project Deficiency is defined as a deficiency of such magnitude as to create doubt that the policies and objectives of Title 23 of the USC (or other applicable federal codes) will be accomplished by the project, (quote from PS&E Certification) and the project has proceeded to the point that the deficiency cannot be corrected. This level of deficiency shall result in the withdrawal of all or a portion of the federal and/or state funds from the project.

Examples of some of the most common (found by Caltrans and FHWA) Unrecoverable Project Deficiencies (Federal) are:

- Projects that are not on an approved FTIP/FSTIP are not eligible for reimbursement with federal funds for any project activities prior to approval of the FTIP/FSTIP and project authorization (see LAPG Chapter 2: Financing the Federal-Aid Highway Program).
- Any preliminary engineering, right of way and construction activities done prior to authorization are not eligible for reimbursement (see LAPM Chapter 3: Project Authorization).
- Violation(s) of permit requirements or conditions obtained as a requirement of the environmental process, or failure to secure required permits, or NEPA approvals will result in a loss of all or part of the federal project funding (see LAPM Chapter 6: Environmental Procedures).
- Consultant contract awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted.
- Design work (over and above what is required for NEPA compliance) prior to NEPA approval is not eligible for reimbursement with federal funds (see LAPM Chapter 3, LAPM Chapter 6 and LAPM Chapter 12: Plans, Specifications & Estimate).
- Failure to include required contract provisions, Form FHWA-1273 and other contract provisions - certifications, in the bid documents shall make the construction phase of the project ineligible for federal reimbursement (see LAPM Chapter 12).
- Right of Way Acquisition prior to NEPA approval (except for hardship and protection with FHWA prior approval) is not eligible for federal reimbursement (see LAPM Chapter 3, LAPM Chapter 6, and LAPM Chapter 13: Right of Way).
- Additional costs resulting from incorrect statements on Right of Way Certification are not eligible for federal reimbursement (see LAPM Chapter 13).
- Failure to open the bids publicly, failure to read the bids aloud, or failure to discuss reason(s) for not reading bid(s) aloud shall make the construction phase ineligible (see LAPM Chapter 15: Advertise and Award Project).
- Award of the construction contract to other than the lowest, responsive bidder for bids based on competition shall make the construction phase ineligible for reimbursement with federal funds (see LAPM Chapter 15).
- Negotiations with bidder(s) prior to award, except for force account projects, shall make the construction phase ineligible for reimbursement with federal funds (see LAPM Chapter 12 and LAPM Chapter 15).
- Award of the contract to a suspended or debarred contractor shall make the construction phase ineligible for reimbursement with federal funds (see LAPM Chapter 15).
- Failure of a local agency to provide adequate supervision (local agency or local agency's consultant adequately staffed and equipped to provide the construction engineering service required) to ensure the project is constructed in accordance with the plans and specifications, shall make the construction phase ineligible for reimbursement with federal funds (see LAPM Chapter 15).
- When the local agency hires a consultant to provide construction-engineering services for a project, the local agency is still required to provide a full-time employee of the agency to be in responsible charge of the project. Failure to do so shall make the

construction phase ineligible for reimbursement with federal funds (see LAPM Chapter 16: Administer Construction Contracts).

- No public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors (see LAPM Chapter 15: Advertise and Award Project).
- No construction work shall be performed by convict labor at the work site or within the limits of any federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the administering agency, unless it is labor performed by convicts who are on parole, supervised release or probation (see LAPM Chapter 12: Plans, Specifications & Estimate).
- Any contract that includes provisions that requires a contractor to give any preference in hiring (with the exception of Indians living on or near a reservation on eligible projects) shall make the contract ineligible for federal reimbursement (see LAPM Chapter 12).
- For local agencies that pay for equipment rental above approved equipment rental rates, the local agency will be responsible for the amounts above the approved rates (see LAPM Chapter 16).
- Permanently incorporating steel or iron or coatings thereon from a foreign source in amounts exceeding the minimal use provisions shall make the construction phase not eligible for reimbursement with federal funds (see LAPM Chapter 12).
- For maintenance items performed by the contractor as a contract item or under a contract change order, those items shall not be eligible for federal reimbursement (see LAPM Chapter 12).
- Payments to a contractor for items of work that was designated for a DBE but performed by others, and there is no documentation for the substitution that was approved, then those items shall not be eligible for reimbursement with federal funds (see LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises). This applies to Contracts executed before May 1, 2006 with race-conscious DBE goals.
- Local agencies that do not enforce the requirement that the contractor posts all specified posters, notices, wage determinations, etc. at the job site will lose all or part of their reimbursement (see LAPM Chapter 16).
- Local agencies that do not enforce contract requirements, whether express or implied, relating to federal statutes and/or contract provisions pertaining to nondiscrimination, non-segregated facilities, equal opportunity, health and safety and work site safety, Title VI, Davis-Bacon Act, Copeland Act, Clean Air Act as amended, Federal Water Pollution Control Act, Lobbying Certification, Non-collusion, False Statements, Buy America, On-the Job Training, or incorporating required contract provisions in subcontracts, etc., including reporting shall result in loss of all, or part of the federal reimbursement (see LAPM Chapter 10: Consultant Selection, LAPM Chapter 12, and LAPM Chapter 16.

Some of the most common examples (found by Caltrans) of Unrecoverable Project Deficiencies (State) are:

- Any capital work (Right of Way acquisition and Construction) done on EEM and projects in advance of CTC's allocation vote is not eligible for reimbursement (see LAPG Appendix A: Financial Guidelines for Local Agency Reimbursement).

The following are considered unrecoverable deficiencies on A&E consultant contracts and shall result in the withdrawal of all or a portion of the federal and/or state funds from the project:

- No records or documentation to support consultant procurement
- No support for scoring and/or ranking of consultants

Two or more of the following are considered unrecoverable deficiencies on A&E consultant contracts and shall result in the withdrawal of all or a portion of the federal and/or state funds from the project:

- No justification for sole-sourcing
- Could not support contract was advertised at all
- No independent cost estimate performed
- Local preference used
- Price used as an evaluation factor
- Scoring evaluation factors or weights do not match those identified in the RFQ/RFP
- Did not include any evaluation factors in the RFQ/RFP
- Cost proposal does not break down job classifications and types of costs by amount and/or rates
- Missing Title VI requirements [per Title 23 CFR 172.9 (c)(1)(vi)] from contracts (Federal Funded Only).
- Missing DBE requirements [per Title 23 CFR 172.9 (c)(1)(vii)] from contracts (Federal Funded Only).

20.3 SANCTIONS

All Major Project Deficiencies (until they are corrected) and Unrecoverable Project Deficiencies require sanctions by Caltrans. Process Review Committee or DLAE shall impose one of the following sanctions, depending on the severity and circumstances of the deficiency:

- 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 Major Project Deficiency is corrected
- Percentage of federal or state funds for a project withdrawn
- All federal or state funds withdrawn from a project

DLAE will be responsible for notifying the local agency of sanctions imposed. Whether or not sanctions are imposed against a local agency, the local agency shall be expected to develop an action plan and implement it to correct the deficiencies. Local agencies will be given adequate time to develop and implement their action plan. Failure to correct the deficiencies in a timely manner shall be grounds for imposing additional sanctions.

20.4 Local Assistance Dispute Resolution Process

The Local Assistance Dispute Resolution Process (LADRP) is an appeal process for local agencies to use when they disagree with the decision they receive from the Caltrans district office concerning their local assistance funded project on or off the State Highway System (SHS). Prompt payment rules may be suspended when the local agency enters into the LADRP. This process is intended to address all local assistance funded project disputes off the SHS.

For local assistance projects on the SHS, the LADRP is limited to disputes involving sanctions, invoices, local assistance policy or procedures, or other E-76 related issues between Caltrans and the local agency. This LADRP is not intended to address disputes involving cooperative agreement or encroachment permit requirements, project scope disagreements, design standard discrepancies, or other technical issues on SHS projects; as those disputes will be elevated for resolution by the Caltrans district office.

Dispute Resolution Procedures

If an impasse is reached between Caltrans' district and the local agency, and the local agency desires to appeal the district's decision, the following procedure is to be used:

1. The local agency submits a written request for appeal to the District Local Assistance Engineer (DLAE). The request must fully describe the project issue and explain where there is agreement and disagreement between the district and the local agency. The request should include:
    a. A detailed statement of the local agency's position on the issue.
    b. A detailed statement of what the local agency believes the district's position to be.
    c. Support material for the local agency's position statement including maps, plans, receipts, invoices, draft or executed agreements, pictures, logs, and other material needed to fully explain the local agency's position regarding the disputed issue.
    d. The DLAE may request additional information to be provided by the local agency.
2. Within two weeks of receiving the local agency's request for appeal, the DLAE will forward the local agency's request package to Caltrans headquarters' Division of Local Assistance (DLA), Office of Guidance and Oversight. The request package is to be accompanied by a district memorandum and enclosures which should include:
    a. A description of the steps taken to resolve the issue.
    b. A detailed discussion of the items that are in dispute with references to sections in the manuals and policy memos that support the district's position.
    c. The district's recommendation on the disputed items.
    d. All material provided in the local agency appeal request package. Other information that supports the district's position such as an overview of the issue, any additional maps, plans, invoices, receipts, draft or executed agreements, pictures, logs, and other material needed to give a full explanation of the disputed issue that was not included in the local agency's appeal request package.

3. The district's appeal request memorandum and all enclosures should be sent to:

   California Department of Transportation
   Division of Local Assistance
   Office of Guidance and Oversight
   1120 N Street, MS-1
   Sacramento, CA 95814

4. The DLA will review the appeal request and within two weeks of receipt from the DLAE, the Chief, Division of Local Assistance, will issue one of three following written responses:

   a. If the DLA does not find sufficient grounds or merit for the appeal, a decision letter stating the reasons for denying the appeal will be sent to the local agency with a copy to the DLAE.

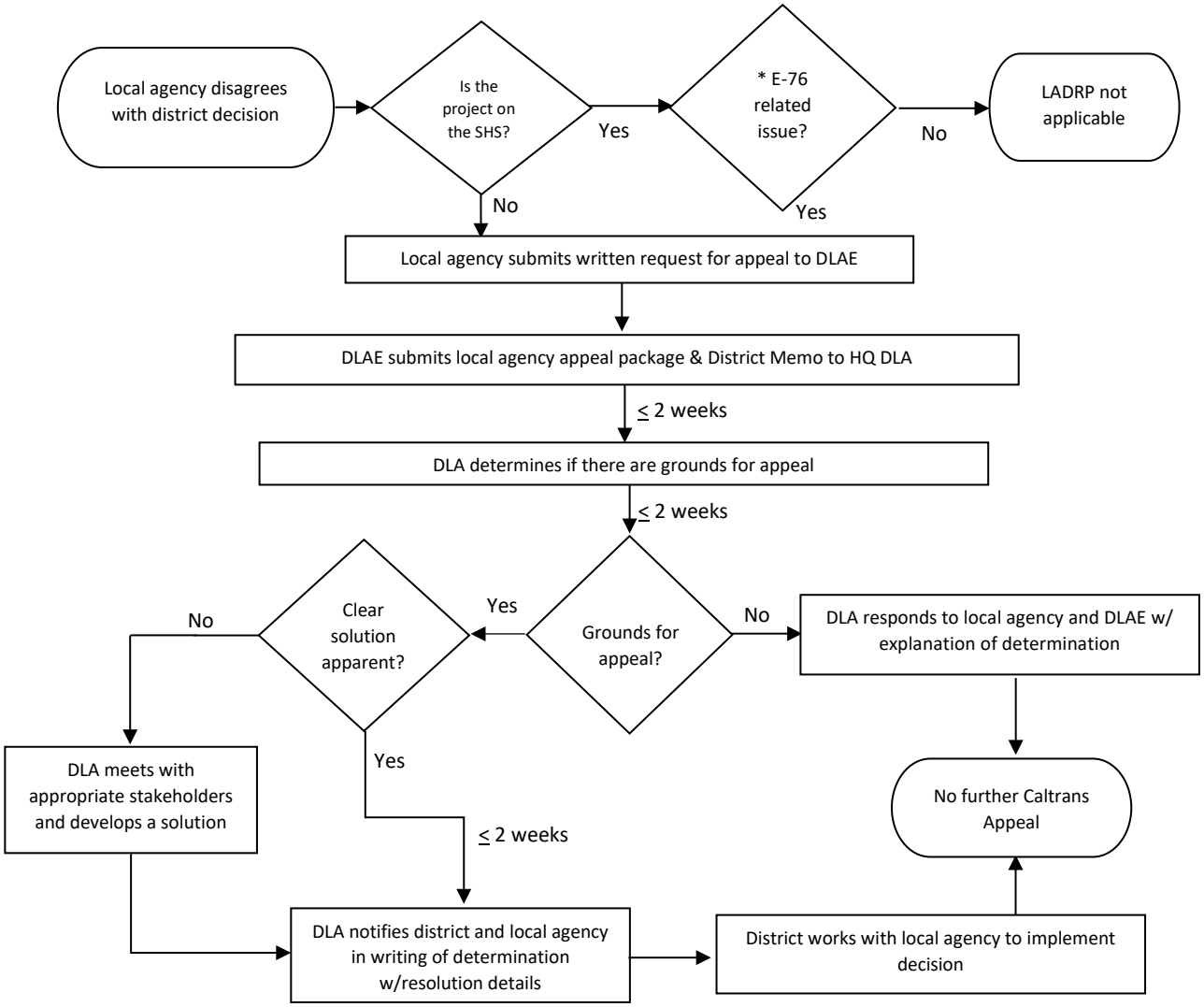
   b. If the DLA finds there are sufficient grounds or merit for the appeal and a clear solution is apparent, a decision letter will be sent to the local agency, with a copy to the DLAE, describing the reasons for the decision and the resolution details.

   c. If the DLA finds that sufficient grounds or merit for an appeal are evident but no clear solution is apparent, a decision letter will be sent to the local agency stating so, with a copy to the DLAE. DLA will next hold a meeting with appropriate stakeholders (local agency, district and headquarters representatives, and others the DLA believes are appropriate). At the meeting, the local agency and the district representative(s) may be asked to give a brief overview of the appeal and a discussion of the items in dispute. After evaluating all the information provided and after consultation with the necessary and appropriate parties and/or agencies; a final decision will be issued in writing notifying the local agency of the resolution details with a copy to the DLAE.

Implementing the DLA Decision

If the local agency is agreeable to the decision and solution, the district will work with the local agency to implement the solution.

If the local agency is not agreeable to the determination and solution, there is no further appeal within Caltrans.



* Sanction, invoice, policy, procedure, or E-76 related issue

Figure 20-1: Local Assistance Dispute Resolution Flowchart